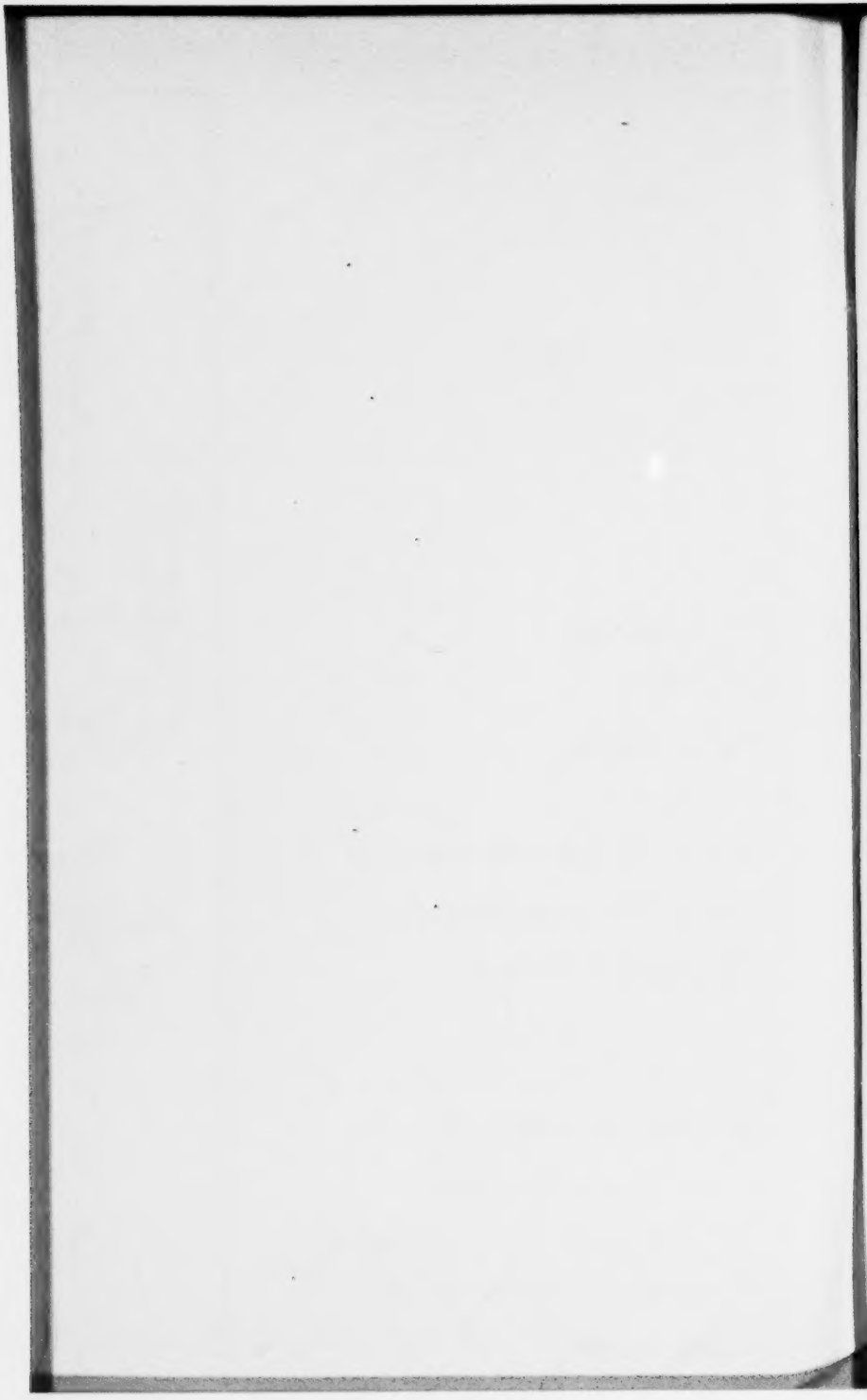

35 D. 1.

Sheriff's Tax Deed.

Filed in evidence by Intervenor at the trial of this cause on February 9th, 1914.

STATE OF LOUISIANA,
Parish of St. Bernard:

Be it known and remembered, that I, Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector of the Parish of St. Bernard, State of Louisiana, in the name of the State, and by virtue of the power and authority in me vested by the Constitution and laws of the State of Louisiana, and in pursuance of the requirements of Act No. 170, approved July 14th, 1898, as amended and re-enacted by Act 315, approved July 7th, 1910; that having published, mailed or delivered the notices as required by Sections 50, 51 & 52 of Act 170 of 1898, and having strictly complied with each and every requirement of said Act prescribed in the premises relating to delinquent taxes and tax payers, and to seizure, advertisement and sale of the property thereof in full, as well as all amendatory laws, I did, in the manner directed in Section 52 of Act No. 170 of 1898, as amended and re-enacted by Sec. 1 of Act No. 315 of 1910, advertise in the St. Bernard Voice, a newspaper published in the Parish of St. Bernard, to be sold for State, District, Levee and Parish Taxes, with interest and costs, at the principal front door of the Court House of this Parish, at Terre-aux-Boeufs, on Saturday June 22, A. D. 1912, beginning at 11 o'clock A. M. giving notice to all parties in interest, and that said advertisement appeared in the issues of said newspaper from the 18th day of May 1912, to the 22nd day of June 1912, and in said list as advertised the following described lands, appear in
the name of the following parties that was not sold after
36 offering it at public auction at the principal front door of the
Court House at Terre-aux-Boeufs, in said Parish of St. Bernard, on said 22nd day of June 1912, and there being no purchaser to said property, and after complying with the requirements of the law and having offered said properties in the manner required in Section 53 of Act No. 170 of 1898, as amended and re-enacted by Sec. 1 of Act No. 315 of 1910, for sale as above set forth, the following described lands in the Parish of St. Bernard, remained unsold, there being no bidders therefor; said properties being assessed to the following named persons as per assessment rolls on file in my office, and are described as follows:

Name and Description of Property.

T. 12. R. 17. Sec. 2, 2,510.05 acres; T. 16. R. 17, Sec. 1, 638 acres T. 16. R. 17. Sec. 2, 605 acres; T. 16. R. 17. Sec. 11, N. ½ of S. E. ¼ 480 acres; T. 16. R. 17. Sec. 12, 472 acres; T. 16. 17. Sec. 14, 502 acres; T. 15. R. 17. Sec. 20, 457 acres; T. 15. R. 17. Sec. 22, 397 acres. Total being 4,122.05 acres.

For 1911:

Assessment	$2,061.00	
State Tax		$10.30
Interest		1.23
Advertising		4.50
Collector's Cost for making, recording and copy of deed, etc.		3.00
Levee District Tax		20.61
Interest		2.47
Special Road Tax of Five Mills		10.30
Interest		1.23
Acreage Tax, Bayou Terre-aux-Boeufs D. Dist.		1,030.50
37 Interest		123.66
Confederate Veteran Tax		.41
Good Roads Tax		.52
Interest		.11
Parish Tax		20.61
Interest		2.47
Aggregating the sum of		$1,231.92

And other properties.

Now, therefore, having complied with all the formalities prescribed by law and the above described lands failing to sell, not receiving a bid therefor, equal to the amount of taxes, interest and costs due thereon, I, Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector of said Parish, by virtue of the authority in me vested by the laws of the State of Louisiana, and in accordance with Section 53 of Act 170 of 1898, as amended and re-enacted by Sec. 1 of Act 315 of 1910, aforesaid, each specific piece of property hereinbefore described was respectively and separately adjudicated to the State of Louisiana. And now in pursuance of said adjudication, and by virtue of the provisions of laws for such cases provided, I, Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector, do, by these presents, grant, bargain, sell, assign, set over, and deliver unto the said State of Louisiana the property hereinbefore described, with all improvements thereon, etc., provided that the said properties herein sold are subject to redemption by the said tax payer or any person interested personally, or as heir, legatee, creditor or otherwise, at any time for the space of one year from the date on which this deed or act of sale shall be filed for record in the Conveyance office of this Parish, upon the payment by the said tax payer
38 or interested person, to the said vendee herein, or its legal representative, the said price of adjudication with twenty per cent and all costs added.

In witness whereof, I have hereunto signed my name at Terre-aux-Boeufs, Parish of St. Bernard, this 1st day of July in the year of our Lord one thousand nine hundred and twelve, in the presence

of William Nunez, and William D. St. Alexandre competent witnesses who also sign hereunto with me.

(Signed) ALBERT ESTOPINAL, Jr.,
Sheriff and ex-Officion Tax Collector, Parish of St. Bernard.

Witnesses:
(Signed) WILLIAM NUNEZ.
WILLIAM D. ST. ALEXANDRE.

Recorded, Parish of St. Bernard, this 16th day of September A. D. 1912, in Book of Conveyances No. 22 Folio 301 et seq.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk and ex-Officio Recorder.

I hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office.
Clerk's Office, Parish of St. Bernard, February 9th, 1914.

(Signed) W. D. ST. ALEXANDRE,
D'y Clerk, ex-Officio Recorder.

D. 2.

Filed in Evidence by Intervenor February 9th, 1914.

St. Bernard, La., June 16th, 1909.

The president called the meeting to order, the Secretary
39 at the desk, and all the members of the said Board, consisting of Guiterez, Estopinal, St. Germain and Puig being present.

It was moved by Com. Guiterrez, and duly seconded, that the minutes of the preceding meeting be approved and the reading of same dispensed with.

It was moved by Mr. St. Germain, seconded by Mr. Guiterrez, that the Board of Commissioners resolve itself into a Board of Canvassers and that they proceed to open and count the ballot box, and proclaim the result of the election held on the 14th day of June, 1909, in accordance with a resolution of said Board at its meeting of May 1st, 1909. Carried.

The Board then proceeded to open the ballot box presented in open meeting, of the election held on June 14th, 1909, and proceeded to examine the ballots and the returns in said box, and after carefully examining the said ballots, and the said returns, it was ascertained that there had been 74 votes, representing $30,833.00 in property cast in favor of the first proposition, I. E., To ratify the levy of the five mill tax on all the assessable property in this Drainage District, for 40 years, beginning with the year 1908, and which tax was levied at an election held by the Police Jury on August 15th, 1908, and there were 10 votes, representing $2,970.00 in property against the said first proposition. Further that there were 74 votes, representing $30,833.00 in property, cast in favor of the second proposition, i. e., To ratify a tax of 3 cents per acre on every acre of land in this Drainage District for forty years, beginning with

the year 1908, and which tax was levied at an election held by the Police Jury on the 15th day of August, 1908, and there were 10 votes representing $2,970.00 in property against the said proposition, and it was found that there were 74 votes, representing $30,833.00 in property, for the third proposition, i. e., To ratify the
40 creation of an indebtedness of $40,000.00 and the issue of bonds for a like amount to be secured by the five mills tax hereabove mentioned and set forth, and which issue of bonds and the creation of which indebtedness was authorized at an election held by the Police Jury on the 9th day of January, 1909, and there were 10 votes, representing $2,970.00 in property against the said proposition. Further that there were 74 votes, representing $30,-833.00 in property cast in favor of the fourth proposition, i. e., To ratify the creation of an indebtedness of $60,000.00 and the issue of bonds for a like amount, which indebtedness and issue of bonds were authorized at an election held by the Police Jury on the 9th day of January, 1909, and there were 10 votes, representing $2,-970.00 in property against the said proposition. And it having been found that a large majority of all the votes cast in this District were in favor of the said four propositions, as above set forth, it was moved by Mr. Guiterrez, seconded by Mr. Puig, that each of said four propositions were duly carried by the voters of this District, and the President was authorized to issue his proclamation, announcing:

First. The voting of the five mill tax authorized at an election held by the Police Jury, on the 15th day of August, 1908, and of the three cent tax authorized at the same election, and that the creation of indebtedness and the issue of bonds for $40,000.00 and $60,000.00 respectively authorized at the election held on the 14th day of June 1909, under the auspices of this Board. Carried.

Moved by Mr. Estopinal, seconded by Mr. St. Germain, That the bonds authorized by this Board at its meeting of May 1st, 1909, be made the form of bonds to be issued by this Board and dated this day, adding in each of said bonds the following words: "The said indebtedness and the issue of which said bonds, and the vot-
41 ing of the tax to secure the same, were fully confirmed and ratified at an election held under the auspices of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District on the 14th day of June, 1909," thereby making the bond complete, read as follows:

Form of Bond.

United States of America.

State of Louisiana.

No. —. $500.00.

Public Improvement Bond.

Five Per Cent (5%) Bond of the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana.

Know all men by these presents, That the "Bayou Terre aux Boeufs Drainage District" of the Parish of St. Bernard, State of Louisiana, acknowledges itself to owe, and for value received, hereby promises to pay to Bearer the sum of Five Hundred Dollars ($500.00) on the — day of ——, A. D. 19— with interest thereon at the rate of five (5%) per cent per annum payable annually on the first day of February, of each year, as evidenced by the coupons hereto attached, until the principal thereof is paid.

The principal sum and interest thereon are payable in Gold coin of the United States of America, of the present standard of coinage at the Whitney Central Trust and Savings Bank in the Parish of Orleans, State of Louisiana, upon presentation and surrender of this bond, and the coupons hereto attached as they respectively mature.

This bond is one of a series of Eighty bonds of Five Hundred
42 Dollars ($500.00) each, all of like date, and numbered from 1 to 80, inclusive, aggregating in amount Forty Thousand Dollars ($40,000.00) issued by the Bayou Terre aux Boeufs Drainage District, of the Parish of St. Bernard, State of Louisiana, for the purpose of public improvement. Said bond being issued under authority of Article 281 of the Constitution of the State of Louisiana, and in accordance with the provisions of acts of the Legislature of Louisiana, and pursuant to ordinance duly passed by the Police Jury of the Parish of St. Bernard, on the 6th day of July, 1908, and submitted to a vote of the tax payers qualified as electors of the Bayou Terre aux Boeufs Drainage District, on the 15th day of August, 1908, and which said ordinance proposed the levy of a five mill tax on the assessable property in said drainage district, and in accordance with another ordinance adopted by the Police Jury of the Parish of St. Bernard *and* the instance and request of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, at a meeting of the said Police Jury of the Parish of St. Bernard, on December 5th, 1908 which said ordinance submitted to the property tax payers in the said Bayou Terre aux Boeufs Drainage District a proposition to create an indebtedness and to issue bonds aggregating Forty Thousand Dollars ($40,000.00), to be secured by a tax of five mills on the dollar on all the property assessed in the said drainage

district, and which said ordinance further proposed to ratify and confirm the tax voted in the said Drainage District on the 15th day of August, 1908, and which said ordinance authorizing the creation of indebtedness and issuance of bonds to the extent of Forty Thousand ($40,000.00) Dollars was duly carried at the election held on January 9th, 1909, as shown by the promulgation of the result of same. The said indebtedness and the issue of which said bonds, were fully confirmed and ratified at an election held under the
43 auspices of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District on the 14th day of June, 1909.

All of which ordinances, Article 281 of the Constitution of the State of Louisiana, and the laws of the State of Louisiana on the subject matter, are made part of this obligation, as though written therein, in extenso, and it is hereby certified that all acts, conditions and things necessary to be done precedent to, and in the issuing of these bonds, in order to make them legal, binding and valid obligations, the said Drainage District and its Board of Commissioners, has been done and performed in due form as required by law, and that the total indebtedness of said Drainage District, including this issue of bonds does not exceed the Constitutional and Statutory limitations of indebtedness and that the taxes necessary to pay the same do not exceed the constitutional or statutory limitations and that the said taxes as levied by the terms of the ordinances of the Police Jury of the Parish of St. Bernard, and by the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, are intended to secure this bond, and are hereby pledged to secure this as well as the whole series issued thereunder, and that this bond and the whole series issued in accordance with the terms of these ordinances and the Constitution and Laws of the State of Louisiana are hereby secured by the taxes voted upon by the property tax payers of said Drainage District on the 15th day of August, 1908 and ratified by said property tax payers at the elections held on January 9th, 1909 and June 14th, 1909, and in accordance with the various ordinances hereabove referred to and adopted. These bonds are made redeemable in numerical order, by the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana, through its Board of Commissioners on the first day of February, 1919 and each year thereafter during the remainder of said forty years.

In witness whereof, the Commissioners of the Bayou Terre
44 aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana, by virtue of the authority vested in them by the laws of the State and the ordinances of the Police Jury of the Parish of St. Bernard have caused this bond to be signed by the President and countersigned by the Secretary and sealed with the seal of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, in the Parish of St. Bernard, and State of Louisiana, on this — day of —— in the year 1909.

—— ——, *President.*

—— ——, *Secretary.*

(Coupon.)

$25.00. No. —.

On the 1st day of —— 19— the Bayou Terre aux Boeufs Drainage District in and for the Parish of St. Bernard, State of Louisiana, will pay to bearer Twenty-five ($25.00) Dollars, at the —— Bank in the City of New Orleans, State of Louisiana, being the interest due on the Public Improvement bond dated ——.

—— ——, *President.*

—— ——, *Secretary.*

Form of Bond.

United States of America.

State of Louisiana.

No. —. $500.00.

Public Improvement Bond.

Five Per Cent (5%) Bond of the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana.

Know all men by these presents, That the "Bayou Terre
45 aux Boeufs Drainage District" of the Parish of St. Bernard, State of Louisiana, acknowledges itself to owe, and for value received hereby promises to pay to Bearer the sum of Five Hundred Dollars ($500.00) on the — day of ——, A. D. 19— with interest thereon at the rate of five (5%) per annum payable annually on the first day of February of each year, as evidenced by the coupons hereto attached until the principal thereof is paid.

The principal sum and interest thereon are payable in Gold Coin of the United States of America, of the present standard of coinage, at the Whitney Central Trust and Savings Bank in the Parish of Orleans, State of Louisiana, upon presentation and surrender of this bond and the coupons hereto attached, as they respectively mature.

This bond is one of a series of One Hundred and Twenty bonds of Five Hundred Dollars ($500.00) each, all of like date, and numbered from 1 to 120 inclusive, aggregating in amount Sixty Thousand Dollars ($60,000.00) issued by the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana, for the purposes of Public Improvement. Said bonds being issued under the authority of Article 281 of the Constitution of the State of Louisiana, and in accordance with the provisions of Acts of the Legislature of Louisiana, and pursuant to ordinances duly passed by the Police Jury of the Parish of St. Bernard, on the sixth day of July 1908, and submitted to a vote of the tax payers qualified as electors of the Bayou Terre aux Boeufs Drainage District on the 15th day of August, 1908, and which said ordinance proposed the levy of a forced contribution of three cents (3¢) per acre on every

acre of land comprised within the limits of said district, and in accordance with another ordinance adopted by the Police Jury of the Parish of St. Bernard, at the instance and request of the
46 Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, at the meeting of the said Police Jury on December 5th, 1908, which said ordinance submitted to the property tax payers in the said Bayou Terre aux Boeufs Drainage District a proposition to create an indebtedness and to issue bonds aggregating Sixty Thousand Dollars ($60,000.00) to be secured by a forced contribution of Three Cents (3¢) per acre on every acre of land comprised within the limits of said Drainage District, and which said ordinance further proposed to ratify and confirm the tax voted in said District on the 15th day of August, 1908; and which said ordinance authorizing the creation of indebtedness, and the issuance of bonds to the extent of Sixty Thousand Dollars ($60,000.00) was duly carried at the said election on January 9th, 1909, as shown by the promulgation of the result of same. The said indebtedness and the issue of which said bonds and the voting of the tax to secure the same, were fully confirmed and ratified at an election held under the auspices of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, on the 14th day of June, 1909, all of which ordinances, Article 281 of the Constitution, and the Laws of the State of Louisiana are made part of this obligation as though written in extenso, and it is hereby certified and recited that all acts, conditions and things necessary to be done precedent to, and in the issuance of these bonds in order to make them legal, binding and valid obligations the said Drainage District, and its Board of Commissioners have been done and performed in due form, as required by law, and that the total indebtedness of said District, including this issue of bonds, does not exceed the Constitutional and Statutory limitations of indebtedness, and that the said taxes necessary to pay the same do not exceed the constitutional and statutory limitations, and that the said taxes as levied by the terms of the ordi-
47 nances of the Police Jury of the Parish of St. Bernard, and by the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District, are intended to secure this bond and are hereby pledged to secure this as well as the whole series issued thereunder, and that this bond and the whole series issued in accordance with the terms of these ordinances, the Constitution and Laws of the State of Louisiana, are hereby secured by the taxes voted upon by the property tax payers of said Drainage District on the 15th day of August, 1908, and ratified by the said property tax payers at the election held on January 9th, 1909, and June 14th, 1909, and in accordance with the various ordinances hereabove referred to and adopted. These bonds are made redeemable in numerical order, by the Bayou Terre aux Boeufs Drainage District of the Parish of St. Bernard, State of Louisiana, through its Board of Commissioners on the 1st day of February 1919, and each year thereafter during the remainder of said forty years.

In Witness Whereof the Commissioners of the Bayou Terre aux Boeufs Drainage District, of the Parish of St. Bernard, State of

Louisiana, by virtue of the authority in them vested by the laws of the State and the ordinances of the Police Jury of the Parish of St. Bernard have caused this bond to be signed by the President and countersigned by the Secretary, and sealed with the seal of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District in the Parish of St. Bernard and State of Louisiana, on this — day of —— in the year 1909.

—— ——, *President.*

—— ——, *Secretary.*

Coupon.

$25.00. No. —.

On the first day of ——, 19—, the Bayou Terre aux Boeufs
48 Drainage District in and for the Parish of St. Bernard, State of Louisiana, will pay to bearer Twenty-five Dollars ($25.00) at the Whitney Central Trust and Savings Bank, in the City of New Orleans, State of Louisiana, being the interest due on the Public Improvement Bond dated —— —, ——.

—— ——, *President.*

—— ——, *Secretary.*

On motion of Commissioner Guiterrez, seconded by Com. Puig, the following resolution was presented to be adopted as an ordinance of this Board:

Whereas it becomes necessary to meet the obligations of this Board on the bonds herein issued at the time of their redemption, as speedily as possible; and

Whereas, it is necessary to accomplish the redemption of these bonds under the terms and conditions set forth and to estabiish therefor a sinking fund to accomplish the said redemption.

Be it Resolved, That after the payment of the interest on the $40,000.00 bond issue, secured by the five mill tax herein, the whole of the surplus of the said five mill tax remaining each year after the payment of the said interest on the said bonds as above set forth shall be set aside, as a sinking fund, to be kept and invested properly to provide a sinking fund for the redemption of the said $40,000.00 bond issue, as secured by the said five mill tax, and that no part arising out of the proceeds of the said five mill tax after the payment of the interest on the bonds shall be devoted to any other purpose than the redemption of the bonds as above set forth;

Be it Further Resolved, That in order to provide for the
49 payment of the principal of the $60,000.00 bond issue, secured by the three cents per acre tax, that each year for the period of forty years, not less than $1,500.00 per year shall be placed in a fund to be known as the sinking fund, and which said amounts shall be properly invested by this Board to provide for the redemption of the said bond issue of $60,000.00 secured by the said three cents per acre tax, and that the said sinking fund shall be kept intact for the sole and exclusive purpose of redeeming the said

bonds as rapidly as the said redemption can be operated under the terms and conditions of the issue of said bonds, and the ordinance of this Board.

Moved by M. St. Germain, seconded by Mr. Estopinal, that the President of this Board is hereby instructed to make an immediate tender of said bonds as completed to Mr. Earl R. Baker, who has contracted to purchase the same, and should he refuse to take the bonds as thus tendered, on behalf of this Board, the President shall immediately file the proper legal proceedings to compel the acceptance of these bonds as the legal and valid bonds of the Bayou Terre aux Boeufs Drainage District. Carried.

On motion of Com. Estopinal, duly seconded, The Secretary was instructed to notify the St. Bernard Dredging and Construction Co. to begin operations on the Bayou at Hopedale Plantation and complete the levees from the upper and lower line and

On motion of Commissioner Estopinal, duly seconded, Mr. Robert Messa was appointed to inspector for that work, and to report at once, and same compensation being allowed as those heretofore appointed.

50 On motion of Com. St. Germain, duly seconded, the Board agreed to appropriate $100.00 for the rebuilding of the houses torn down on the Bayou, belonging to the Poydras Planting Company and that the Board will not furnish materials if any *is* necessary.

On motion of Com. Puig, duly seconded, The Engineer was instructed to survey work at the lower end of La Chinche so as to ascertain just how much the Board has spent for the digging of the Bayou as the present figures which the Board has are only approximate as given by Engineer Smith when he had charge of work, it being difficult therefore to ascertain exactly what has been spent.

There being no further business, the Board adjourned.

(Signed) C. VERRET, *Pres.*

(Signed) BEN. F. ESTOPINAL,
Secretary Bd. of Com. Bayou Terre-aux-Boeufs D. D.

D. 3.

Filed in Evidence by Intervenor February 9th, 1914.

ST. BERNARD, LA., Dec. 30, 1909.

Proceedings of the Meeting of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District.

The Board was called to order by President C. Verret, Secretary B. F. Estopinal at his desk, there were also present Messrs. Alcide Guiterrez, Adam Estopinal, Michel St. Germain and John B. Puig.

Resolution by Mr. Guiterrez seconded by Mr. Puig that this Board resolve itself into a Board of Canvassers for the purpose of compiling

the returns of the election held on December 28th, 1909, in
51 accordance with an ordinance of this Board of date Nov. 20, 1909. Carried.

The President then declared the Board to be in session as a Board of Canvassers to canvass the results of the said election of Dec. 28th, 1909, whereupon the ballot box was produced, and the President appointed Messrs. Adam Estopinal and Alcide Guiterrez as tellers to count the votes, in the presence of the Board. The ballot box was duly opened in the presence of the Board; the tellers with the aid of the members of the Board; all present, acting as a Board of Canvassers, proceeded to count the v[illegible]l after examination of the ballot box and tally sheets, ascert[illegible]t there were 53 votes cast in favor of proposition No. 1, viz:

To vote a six (6) cents per acre tax on every acre of land in this district, beginning with the year 1910, and for each year thereafter, for forty (40) years, in accordance with Art. 281 of the Constitution of the State of Louisiana, and the acts of the General Assembly of this State to carry the same into effect.

Said votes representing an assessed valuation of $23,999 and that there were 7 votes against proposition No. 1, said votes representing an assessed valuation of $1950.25.

That there were 53 votes cast in favor of Proposition No. 2, viz:

To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage Dist. to incur an indebtedness to the extent of One Hundred and sixty-five thousand dollars, ($165,000.00) and to further authorize the said Board of Commissioners of the Bayou Terre-aux-Boeuf Drainage Dist. to capitalize the tax hereinabove provided for in Proposition No. 1 and to issue One Hundred and Sixty-five negotiable bonds of One Thousand Dollars ($1,000.00) each, aggregating One Hundred and Sixty-five Thousand Dollars
52 ($165,000.00) in conformity with Art. 281 of the Constitution of the State of Louisiana, and the laws of the State, said bonds to be secured by the tax of six (6) cents per acre hereinabove provided for the principal and interest, until paid. The said bonds to be payable in Forty (40) years from February 1st, 1910; redeemable at the option of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District after ten (10) years from their date to bear five per cent (5%) interest per annum from their date, until paid, payable annually. And which said bonds the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District is authorized to sell at Par and to devote the proceeds of said sale to the completion of the drainage work in said district.

Said votes in favor of proposition No. 2 representing assessed value $23,999 and that there were 7 votes cast against proposition No. 2 said votes representing an assessed valuation of $1,950.25.

That there were 53 votes cast in favor of proposition No. 3 said votes representing an assessed valuation of $23,999, viz:

To cancel and annul after January 1st, 1910, the ad valorem tax of five (5) mills on the dollar on all the assessable property in said district voted and levied at an election held on August 15, 1908, and ratified at the elections held in this district on January 9th, 1909,

and June 14th, 1909, and said Board of Commissioners for said Drainage District is specifically instructed not to enforce the collection of said tax from and after January 1st, 1910.

That there were 7 votes cast against proposition No. 3, said votes representing an assessed valuation of $1950.25.

53 That there were 53 votes cast in favor of Proposition No. 4 said votes representing an assessed valuation of $23,999, viz:

To cancel annul and rescind the bond issue of Forty Thousand Dollars ($40,000.00) voted and authorized in this Drainage District by the property holders qualified to vote at the election held on January 9th, 1909, and ratified at another election held in this drainage District on June 14th, 1909, and which said bond issue of Forty Thousand Dollars ($40,000) was secured by a tax of five (5) mills on all the assessable property in this district, voted and levied at an election held on August 15th, 1908, and ratified at elections held in this district on January 9th, 1909, and June 14th, 1909.

That there were 7 votes cast against proposition No. 4 said votes representing an assessed valuation of $1950.25.

And the said Proposition No. 1 having received a majority in number and amount of the votes cast at said election is declared to be carried.

And the said proposition No. 2 having received a majority in number and amount of the votes cast at said election is declared to be carried.

And the said Proposition No. 3 having received a majority in number and amount of the votes cast at said election is declared to be carried.

And the said proposition No. 4 having received a majority in number and amount of the votes cast at said election is declared to be carried.

And there being no further business before the said Board, acting as a Board of Canvassers it was moved and seconded that

54 the Board of canvassers be dissolved and that the Board of Commissioners of the Bayou Terre-aux-Boeuf Drainage District resume its session. Carried.

The Board of Commissioners of the Bayou Terre-aux-Boeuf Drainage District having resumed its session, the President in the Chair, Secretary Estopinal at his desk, the President reported the results of the Board acting as a Board of Canvassers, and showed that each proposition voted upon at the election of December 28, 1909, had each carried by a majority in number and amount of the votes cast at said election, it was moved by Mr. Estopinal, and seconded by Mr. St. Germain that the President of this Board is instructed to issue his proclamation promulgating and announcing the results of said election and the vote cast at said election of December 28, and showing that each one of the propositions submitted to the property tax-payers qualified to vote in this district had been carried, and said proclamation promulgating the result of said election be published for 30 days in the St. Bernard Voice. Carried.

It was moved by Mr. Puig, seconded by Mr. Guiterrez, that "Whereas the voters of the Bayou Terre-aux-Boeuf Drainage District

on Dec. 28th, 1909, have authorized the levy of a six (6) cents per acre tax on every acre of land in this district beginning with the year 1910, in accordance with Art. 281 of the Constitution, of this State and the Acts of the General Assembly of this State carrying this article into effect.

Be It Resolved, That this Board hereby instructs the levy of a six (6) cents per acre tax on every acre of land in this district in accordance with the terms and conditions of this election, beginning with the year 1910, and for each year thereafter for forty (40) years, and the President of this Board is further instructed to make the necessary arrangements in accordance with law with the Sheriff
55 of St. Bernard Parish, to collect the six (6) cents per acre tax for the year 1910, and for each year thereafter, for forty (40) years, on every acre of land in the Bayou Terre-aux-Boeuf Drainage Dist., and that a copy of this ordinance be forwarded to the Sheriff of the Parish of St. Bernard as his authority to collect the said tax. Carried.

D. 4.

Filed in Evidence by Intervenor February 9th, 1914.

ST. BERNARD, LA., August 28, 1912.

Proceedings of the Special Meeting of the Board of Commissioners of the Bayou Terre aux Boeufs Drainage Dist. Held on August 28, 1912.

The Board was called to order by the President, Adam Estopinal, Secretary B. F. Estopinal at his desk. There were present also the following Commissioners: Estopinal, Guiterrez, J. B. Puig and Frank Messa. Absent C. Verret.

There having been no regular meeting on account of lack of quorum in the month of July, the minutes of the previous meeting were approved.

The following resolution was introduced by Mr. Guiterrez seconded by Mr. Puig:

Be it resolved, That this Board proceed to open the ballot boxes and to count the votes cast at special election held in this district, on the 26th day of August, 1912 and to declare the result of said election and that the President appoint two tellers to count the votes and compile the returns thereof. Carried.

The President thereupon announced the appointment of Messrs. Puig and Guiterrez as tellers to open the ballot boxes and to count the votes cast at said election of August 26, 1912, in the
56 presence of the members of the Board; thereupon the tellers and the members of the said Board proceeded to count the votes cast at said election and after examination of the ballot boxes and counting the ballots therein, and an examination of the ballots therein, and the tally sheets and lists of voters and a compilation made by the commissioners and Clerk of Election, of said ballots

and being duly and fully advised in the premises, it was ascertained and determined by the Board that there were 63 votes, representing an assessed valuation of Twenty-seven Thousand and Nine Hundred Ninety-one & 97/100 Dollars ($27,991.97) cast in favor of proposition No. 1, namely:—

1st. To authorize the Board of Commissioners of the Bayou Terre aux Boeuf Drainage District to incur an indebtedness of Five Hundred Thousand Dollars ($500,000.00) to be evidenced by five hundred (500) negotiable bonds, with interest bearing coupons attached of One Thousand Dollars ($1,000.00) each, in conformity with the provisions of Article 281 of the Constitution and Laws of this State, said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this district at the election held on the 10th day of January, 1911, the said bonds to mature within forty (40) years after their date and to contain provisions for their prior redemption, at such times and in such amounts as the Board of Commissioners may, by resolution, determine and said bonds to bear five (5%) per cent per annum interest from their date, payable semi-annually, on the first day of August and February of each year, commencing with the first day of February, 1913 and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said district as in the opinion of said Board of Commissioners may be most desirable.

and that there were fourteen votes, representing an assessed
57 valuation of Fifty-three Hundred Eighty-three & 75/100 Dollars ($5,383.75) cast against Proposition No. 1.

That there were Sixty-Three votes representing an assessed valuation of Twenty-seven Thousand Nine Hundred Ninety-one & 97/100 Dollars ($27,991.97) cast in favor of Proposition No. 2, namely.

2nd. To vote to confirm and approve the imposition and levy of an annual contribution or acreage tax of Sixteen (16¢) cents per acre voted at the election held in this district on the 10th day of January, 1911, the said tax to run for a period not longer than forty (40) years from the date of its imposition and the said tax to be funded into bonds in accordance with law.

and that there were fourteen votes, representing an assessed valuation of Fifty-three hundred Eighty-three & 75/100 Dollars, ($5,383.75) cast against the said Proposition No. 2.

That there were Sixty-three votes, representing an assessed valuation of Twenty-seven Thousand Nine Hundred Ninety-one and 97/100 Dollars ($27,991.97) cast in favor of Proposition No. 3, namely.

3rd. To vote to ratify and approve the bond issue of Sixty thousand ($60,000.00) ratified at an election held on the fourteenth day of June, 1909.

and that there were fourteen votes, representing an assessed valuation of Fifty-three Hundred, Eighty-three and 75/100 Dollars ($5,383.75) cast against said Proposition No. 3.

That there were Sixty-three votes, representing an assessed valuation of twenty-seven Thousand Nine Hundred Ninety-one & 97/100 Dollars ($27,991.97) cast in favor of Proposition No. 4, namely:—

4th. To vote to ratify and approve the bond issue of *of*
58 One Hundred and Sixty-five — Dollars ($165,000.00) voted at an election held on the 28th day of December, 1909.

and that there were fourteen votes, representing an assessed valuation of Fifty-three Hundred Eighty-three and 75/100 Dollars ($5,383.75) cast against the said Proposition No. 4.

And it having been ascertained that Proposition No. 1 received a majority in number and amount of votes cast at said election, said Proposition No. 1 is declared to be carried.

And the said Proposition No. 2 having received a majority in number and amount of the votes cast at said election was declared to be carried.

And the said proposition No. 3 having received a majority in number and amount of votes cast at said election was declared to be carried.

And the said Proposition No. 4 having received a majority in number and amount of votes cast at said election was declared to be carried.

And this proces verbal and the canvass of the votes at said election held in this district on August 26th, 1912, having been duly written and read was thereupon signed by the tellers appointed by the President of the Board and by the President of the Board, its Secretary and each member thereof.

Tellers,

(Signed) ALCIDE GUITERREZ.
" JOHN B. PUIG.

Commissioners,

(Signed) ALCIDE GUITERREZ.
JOHN B. PUIG.
FRANK MESSA.
BEN. F. ESTOPINAL,
Secretary.

I, Adam Estopinal, President of the Board of Commis-
59 sioners of the Bayou Terre aux Boeuf Drainage District, do hereby announce and proclaim the result of the election held in this district on August 26, 1912, as ascertained by the canvass of the vote of said election by the Board of Commissioners of said Bayou Terre aux Boeuf Drainage District in session assembled on the 28th day of August, 1912 and the said canvass showed:

Sixty-three votes, representing an assessed valuation of $27,991.97 cast in favor of Proposition No. 1, to-wit:—

1st. To authorize the Board of Commissioners of the Bayou Terre aux Boeuf Drainage Dist. to incur an indebtedness of Five hundred Thousand Dollars ($500,000.00) to be evidenced by Five Hundred (500) negotiable bonds, with interest bearing coupons attached of One Thousand Dollars ($1,000.00) each, in conformity with the pro-

visions of Article 281 of the Constitution and Laws of this State, said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this district at the election held on the 10th day of January, 1911, the said bonds to mature within forty (40) years after their date and to contain provisions for their prior redemption, at such time and in such amounts as the Board of Commissioners may by resolution, determine and said bonds to bear five (5%) per cent. per annum interest from their date, payable semi-annually on the first day of August and February of each year, commencing with the first day of February, 1913 and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said district as in the opinion of said Board of Commissioners may be most desirable.

And that there were fourteen votes, representing an assessed valuation of $5,383.75 cast against Proposition No. 1 as above set forth; the said proposition having received a majority in number and amount of the votes cast was declared to be carried;

That there were 63 votes, representing an assessed valua-
60 tion of $27,991.97 cast in favor of Proposition No. 2 towit:

2nd. To vote to confirm and approve the imposition and levy of an annual contribution or acreage tax of Sixteen Cents (16¢) per acre voted at the election held in this district on the 10th day of January, 1911, the said tax to run for a period not longer than forty (40) years from the date of its imposition, and the said tax to be funded into bonds in accordance with law.

And that there were fourteen votes, representing an assessed valuation of $5,383.75 cast against said Proposition No. 2 as above set forth; the said Proposition No. 2 having received a majority in number and amount of the votes cast was declared to be carried.

That there were 63 votes, representing an assessed valuation of $27,991.97 cast in favor of Proposition No. 3, to-wit:

3rd. To vote to ratify and approve the bond issue of Sixty Thousand Dollars ($60,000.00) ratified at an election held on the fourteenth day of June, 1909.

And that there were 14 votes, representing an assessed valuation of $5,383.75 cast against said Proposition No. 3 as above set forth; the said Proposition No. 3 having received a majority in number and amount of the votes cast was declared to be carried.

That there were 63 votes, representing an assessed valuation of $27,991.97 cast in favor of Proposition No. 4 to-wit:

4th. To vote to ratify and approve the bond issue of One Hundred Sixty-five Thousand Dollars ($165,000.00) voted at an election held on the 28th day of December, 1909.

And that there were fourteen votes, representing an assessed
61 valuation of $5,383.75 cast against Proposition No. 4 as above set forth; and the said Proposition No. 4 having received a majority in number and amount of the votes cast was declared to be carried.

Therefore, in accordance with the resolution of the Board of Commissioners of the Bayou Terre aux Boeuf Drainage Dist. passed at its meeting of August 28th, 1912, I hereby declare said Propositions

Nos. 1, 2, 3 and 4 as heretofore set forth, to have been duly carried, this proclamation announcing the results of the votes thus cast.

Thus done and passed in the Parish of St. Bernard on this 28th day of August, 1912.

(Signed) ADAM ESTOPINAL, *President.*
(Signed) BEN. F. ESTOPINAL, *Secretary.*

Agreement of Counsel Relative to Exhibits D2, D3, & D4.

Filed July 31st, 1914.

Frank L. Richardson. Frank Soule.

Richardson & Soule,
Attorneys at Law.

New Orleans, July 30th, 1914.

29th Judicial District Court, Parish of St. Bernard.

No. 900.

Dan'l Shaw
vs.
Terre-aux-Boeufs Drainage Dist.

The minutes of the Bayou Terre-aux-Boeufs Drainage Dist. State of La., of date June 16/09, and Dec. 30/09, and August 28/12, having been exhibited to the undersigned counsel for Pl't'ff in above entitled cause—it is consented that copies of them certified by the secretary of said Board may be used in evidence and included
62 in the Transcript of appeal to the Supreme Court of the State, provided that the note of evidence taken at the trial of this cause in the lower Court shows that said minutes were in fact offered in evidence and a note of evidence thereof made—counsel writes this consent and proviso because of not being able to see and examine said note of evidence at this time.

(Signed) RICHARDSON & SOULE,
By F. L. RICHARDSON,
Att'ys for Pl't'ff & App'l't.
(Signed) H. L. FAVROT,
PAUL A. SOMPAYRAC,
Att'ys for Intervenor.

Judgment.

Filed June 8th, 1914.

This cause came on for trial on the 9th day of February, 1914.

Present:

O. S. Livaudais and Richardson & Soule, Attorneys for Plaintiff.
N. H. Nunez, H. L. Favrot and P. A. Sompayrac, Attorneys for defendants and intervenor.

When after hearing the pleadings, the evidence and argument of Counsel, and the Court considering the Law and the Evidence to be in favor of defendant and intervenors and against plaintiff for the reasons this day orally assigned,

It is ordered, adjudged and decreed that there be judgment in favor of defendant, Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and Paul Hill Saunders, intervenor, and against Plaintiff Daniel Shaw, rejecting and dismissing said plaintiff's demand at plaintiff's cost.

63 Judgment read, rendered and signed in open Court, this 8th day of June, 1914.

(Signed) R. EMMET HINGLE, *Judge.*

Petition for Appeal and Order.

Filed June 20th, 1914.

To the Honorable the 29th Judicial District Court for the Parish of St. Bernard, State of Louisiana:

The petition of Daniel Shaw, who is the plaintiff in this cause, respectfully represents:—

That a judgment in favor of the Board of Commissioners of the Bayou Terre Aux Boeufs Drainage District, defendant, and P. H. Saunders, Intervenor, was rendered herein, on the 8th day of June, 1914, and signed on the 8th day of June, 1914 that said judgment is contrary to the law and to the evidence; that petitioner is aggrieved thereby and desires to appeal therefrom suspensively and devolutively, to the Supreme Court of the State of Louisiana.

Wherefore, petitioner prays for an order of appeal suspensive and devolutive from said judgment, returnable to the Supreme Court of the State of Louisiana; that the return day therefore be fixed by the Court, as well as the amount of the bond to be furnished by petitioner.

Petitioner further prays for service and citation upon the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District.

And for all costs and general relief.

(Signed) RICHARDSON & SOULE.
Of Counsel for Appellant.

64 (Signed) OLIVER S. LIVAUDAIS, *Att'y.*

Service accepted, all rights reserved.

(Signed) H. L. FAVROT,
Att'y for Def'd't & Intervenor.
N. H. NUNEZ,
Att'y for D'f't.

Order.

Let the petitioner be and he is hereby granted a suspensive and devolutive appeal as prayed for in the foregoing petition, returnable to the Supreme Court of the State of Louisiana on the Second Monday of August 1914, according to law, upon his furnishing bond,

with good and solvent security in the sum of One Hundred Dollars, and let a copy of this petition and order and a citation of appeal be served upon the Board of Commissioners of the Bayou Terre aux Boeufs Drainage District according to law.

Parish of St. Bernard, La., the 20th day of June, 1914.

(Signed) R. EMMET HINGLE, *Judge.*

Appeal Bond.

Filed June 20th, 1914.

Know All Men By These Presents That, we Daniel Shaw, as principal, and Oliver S. Livaudais, as surety, are held and firmly bound unto Jas. D. St. Alexandre, Clerk of the 29th Judicial District Court for the Parish of St. Bernard, his successors, executors, administrators and assigns, in the sum of One Hundred ($100.00) Dollars, for the payment, whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on this 22nd day of June in the
65 year of our Lord one thousand nine hundred and fourteen.

Whereas, the above bounden Daniel Shaw and Oliver S. Livaudais, have this day filed petition of appeal from a final Judgment rendered against Daniel Shaw in the suit of Daniel Shaw vs. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, No. 900, of the 29th Judicial District Court for the Parish of St. Bernard, on the 8th day of June, 1914, and signed on the 8th day of June, 1914.

Now the condition of the above obligation is such, That the above named Daniel Shaw shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of his estate real or personal, if he be cast in the appeal; otherwise that the said Oliver S. Livaudais, shall be liable in his place.

(Signed) DANIEL SHAW,
Per F. L. RICHARDSON, *Attorney.*
" OLIVER S. LIVAUDAIS.

Extract from the Minutes of the 29th Judicial District Court of Louisiana in and for the Parish of St. Bernard.

No. 900.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS FOR THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

October 31st, 1913.

The Court met to-day pursuant to adjournment.
66 Present: The Honorable R. Emmet Hingle, Judge.
On motion of O. S. Livaudais, Esq., of counsel for plaintiff,

this case was fixed for trial on Thursday the 6th day of November, 1913, at 10 o'clock A. M.

Thursday, November 6th, 1914.

The Court met to-day pursuant to adjournment.

Present: The Honorable R. Emmet Hingle, Judge.

On motion of O. S. Livaudais and Mr. Richardson, Esqrs., of counsel for plaintiff, this case was continued to Monday, November 17th, 1913, at 10 o'clock A. M.

Monday, November 17th, 1913.

The Court met to-day pursuant to adjournment.

Present: The Honorable R. Emmet Hingle, Judge.

On motion of N. H. Nunez, of counsel for defendant, and by consent of the attorneys for plaintiff, this case was continued indefinitely.

Monday, December 15th, 1913.

On motion of O. S. Livaudais, Esq., of counsel for plaintiff, this case was fixed for trial on Monday, January 19th, 1914, at 10 o'clock A. M.

Monday, January 19th, 1914.

The Court met to-day in regular session.

Present: The Honorable R. Emmet Hingle, Judge.

This case regularly fixed came on this day.

Present: N. H. Nunez, and H. L. Favrot, Esqrs., Attorneys
67 for Defendant, and Mr. Richardson of counsel for plaintiff; and P. A. Sompayrac, of counsel for Intervenor.

On motion of Henry L. Favrot, Esq., it is ordered, that his appearance as counsel for the Board of Commissioners for the Bayou Terreaux-Boeufs Drainage District, as shown by the answer filed herein, be, and is hereby vacated, and he is released from any obligation whatsoever to defend the suit of said Board, and that his name be stricken from the record as Counsel for said Board.

(Signed) R. EMMET HINGLE, *Judge*.

On motion of Paul H. Sompayrac, Esq., of counsel for P. H. Saunders, Intervenor herein, and on suggesting to the Court that mover is desirous of retaining the service of Hon. H. L. Favrot in this case, it is ordered, that Hon. H. L. Favrot be placed on record as counsel representing the Intervenor in this cause.

On motion of P. H. Sompayrac, of counsel for Intervenor, this case was fixed for trial on Monday, February 9th, 1914, at 10 o'clock A. M.

Monday, February 9th, 1914.

The Court met to-day being its regular term.

Present: The Honorable R. Emmet Hingle, Judge.

This case came on this day for trial.

Present: Col. Richardson and O. S. Livaudais, Esqrs., of counsel

for plaintiff, and N. H. Nunez, Esq., of Counsel for defendant; and Messrs. P. A. Sompayrac and H. L. Favrot, Attorneys for Intervenor.

68 All parties ready for trial.

After hearing the evidence and argument of counsel, the case was submitted, and taken under advisement by the Court.

Monday, June 8th, 1914.

The Court met to-day being its regular term.

Present: The Honorable R. Emmet Hingle, Judge.

In this cause heretofore argued and submitted to the Court on the 9th day of February, 1914, the Court rendered the following Judgment:

Judgment.

For Judgment see page 59 of this Transcript.

And there being no further business the Court adjourned.

I do hereby certify the above and foregoing to be a true and correct extract from the minutes of the 29th Judicial District Court of Louisiana, for the Parish of St. Bernard, of its sessions held on the 31st October; 6th November; 17th November, and 15th December, 1913; and on the 19th January, 9th February and the 8th of June, 1914.

Parish of St. Bernard, Aug. 7th, 1914.

[SEAL.] (Signed) JAS. D. ST. ALEXANDRE, *Clerk.*

Certificate.

STATE OF LOUISIANA:

29th Judicial District Court for the Parish of St. Bernard.

I, James D. St. Alexandre, Clerk of the 29th Judicial District Court for the Parish of St. Bernard, do hereby certify that the foregoing 65 pages and accompanying testimony marked "A," "B" and

69 "C" do contain a true, correct and complete Transcript of all the proceedings had, documents filed, testimony and evidence adduced upon the trial of the cause wherein Daniel Shaw is Plaintiff, and the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District Defendant, and Dr. Paul Hill Saunders, Intervenor, instituted in this Court and now in the records thereof under the No. 900.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the Parish of St. Bernard, Louisiana, on this 7th day of August, in the year of our Lord one thousand nine hundred and fourteen and in the one hundred and thirty-eighth year of the Independence of the United States of America.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk.

[SEAL.]

29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 900.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF TERRE-AUX-BOEUFS DRAINAGE DISTRICT; Dr. PAUL HILL SAUNDERS, Intervenor.

Testimony and Notes of Evidence Taken in Open Court on this 9th Day of February, 1914, in the Above-Entitled and Numbered Cause, on Behalf of Plaintiff, Before the Honorable R. Emmet Hingle, Judge, Presiding.

Appearances:

Mr. O. S. Livaudais and Messrs. Richardson & Soule, Attorneys for Plaintiff.

Mr. N. H. Nunez, Attorney for Defendant.

Messrs. P. A. Sompayrac and H. L. Favrot, Attorneys for Intervenor.

70 Reported by D. O'Day, Official Stenographer.

Index.

	Direct.	Cross.
Mr. A. C. Gonzales	72	74
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Offer of Exhibits, Pages	70, 72, 78	

By Mr. Livaudais: Counsel for Plaintiff offers, produces and files in evidence, a certified copy of Act of Sale of lands described in the plaintiff's petition, purchased by the plaintiff herein, Daniel Shaw, from Harley R. Welsh, as per Act dated the — day of ——, 1910, Registered in Conveyance Book 22, Folio 226, Parish of St. Bernard.

By Mr. Favrot: If your Honor, please, I interpose an objection, with the authority of Judge Nunez, both on behalf of the Board of Commissioners of the Terre-aux-Boeufs Drainage District, and on behalf of the intervenor, for the reason that no evidence can be adduced in this case until the interests of the plaintiff in this case is shown by present ownership of the property. The mere acquisition of the property in its initial stage is admitted in the Answer, and the only thing at issue now is his present ownership of the property. If it has been sold and he has parted with its ownership, it is whether now he has got any interest in this property to appear as a party in interest in this case.

71 By Mr. Livaudais: In answer to that we state, if your Honor please, that we are not called upon to produce anything but our Act of Purchase to show the ownership of the property. If the defendant claims that we have parted from that ownership the burden of proof is on them to show that. Moreover, under our

practice, as it is now in vogue, it is necessary that the defendants should answer each allegation of the petition, and it has to be sworn to. In this particular case both the intervenor and the defendant admit that we are the owners in their answer, and, therefore, they could not contradict it at this time if they chose to do so.

By Mr. Richardson: And also I would add, that after the testimony is offered in this case we propose to argue it, and we are prepared fully to argue this objection; but we suggest that it would be better for us to offer all of our evidence and then take up the argument at the same time, so that the case may go to the Supreme Court. It would be expending too much time to keep on one point and then come back at another. So that this objection should go over to be considered with the whole case.

By the Court: The court refers the objection to the effect.

By Mr. Favrot: To which ruling of the Court, counsel for
72 defendants and intervenor excepts, and makes this note in lieu of a formal bill of exceptions.

By Mr. Livaudais: Counsel for Plaintiff produces, offers and files in evidence, the notice served on the plaintiff in this case by the Sheriff and Ex-Officio Tax Collector of the Parish of St. Bernard, notifying plaintiff of the intention of the Sheriff to sell plaintiff's property for the tax herein in controversy; said notice for the year 1911 being marked "P-1," and for the year 1912, being marked "P-2."

By Mr. Favrot: I make the same objection as previously urged.

By the Court: The Court makes the same ruling.

Same bill of exceptions reserved.

Mr. A. C. Gonzales, being duly sworn by the Clerk of Court, as a witness on behalf of Plaintiff, deposes and says:

Direct*ion* examination by Mr. Livaudais:

Q. Mr. Gonzales, you are the Assessor of the Parish of St. Bernard?

A. Yes, sir.

Q. Have you got your Assessment Rolls here handy?

A. Yes, sir.

Q. Will you turn to the assessment of Daniel Shaw and state what he is assessed for—the amount that his property is assessed for?

A. For what year?

Q. For the year 1911?

A. Well, Daniel Shaw is assessed for four thousand one hundred and twenty-five acres and five hundredths.

Q. How much is the assessment?

73 A. He is assessed at the average price of fifty cents, total assessment.

Q. What is the property valued at?

A. His taxes, you mean?

A. No, His assessment?

A. Two thousand and sixty one Dollars.

Q. How much is the tax on that?

A. Outside of the Bayou Terre-aux-Boeufs Drainage District?

Q. Name each tax there?
A. Well, he is assessed for the parish, $20.61.

State tax	10.30
Confederate tax	.41¢
Good Road Tax	.51¢
Levee tax	20.61
Special road and bridge tax	10.30
Which makes a total of	$62.74

Q. Is there any other taxes besides those you have read off?
A. Yes, sir.
Q. What tax is that?
A. Bayou Terre-aux-Boeufs Drainage District tax.
Q. How much is that tax?
A. He is assessed for four thousand one hundred and twenty two acres and five hundredths of an acre, at twenty-five cents per acre. There are three different assessments: There is one of three, six and sixteen cents, which makes twenty-five cents per acre.
Q. It amounts to how much in all?
A. One thousand thirty & 50/100 Dollars ($1,030.50).
Q. So as I understand it, Mr. Assessor, there are three special items of acreage tax which amounts to twenty-five cents an acre?
A. Yes, sir.
Q. That is what he is paying?
74 A. Yes, sir.
Q. And that twenty-five cents an acre nets——?
A. One thousand and thirty & 50/100 Dollars ($1,030.50).
Q. Now, is he assessed the same way for 1912?
A. Yes, sir.

Cross-examination by Mr. Favrot:

Q. Mr. Gonzales, how long has the assessment been placed at fifty cents an acre on this land?
A. Not fifty cents.
Q. The assessment. I am not talking about taxes now, I am talking about the assessment; how long has the valuation been placed at fifty cents an acre?
A. On the Shaw land?
Q. Yes?
A. Since it has been assessed.
Q. How long has it been assessed?
A. I don't know how long I have been carrying Mr. Shaw.
Q. It has always been assessed at fifty cents an acre?
A. Yes, sir.
Q. Now Mr. Gonzales, do you know where Mr. Shaw's lands are?
A. I can tell you by the official map where they are.
Q. You know on the official map where they are?
A. Yes, sir.
Q. Are they within the boundaries of the Bayou Terre-aux-Boeufs Drainage District?
A. Yes, sir.

By Mr. Richardson: We object, unless you produce the map.
By the Court: The objection is overruled.

By Mr. Favrot:

Q. You have located them on the map?
A. Yes, sir.
Q. And you know they are within the boundaries of the Bayou Terre-aux-Boeufs Drainage District?
75 A. Yes, sir.

Redirect examination by Mr. Livaudais:

Q. Mr. Gonzales, when you say they are within the limits, what do you mean?
A. They are West of Township 14, Range 18. All land West of that line is supposed to be within the District.
Q. In other words, they are between the Sea and the parish of St. Bernard?
A. I cannot tell you, Mr. Livaudais; they might be; I don't know.
Q. You don't know except according to the township and the range, and the section. You are of the opinion that they must be located between the parish of St. Bernard and the township that you have just stated there;—what is that?
A. Township 14, Range 18. I think it is west of township 14, Range 18; I am not sure; I can tell if I look at the map.
Q. Will you get that map?
A. It is right there, Mr. Livaudais. (Witness pointing to the map.)

Counsel for plaintiff hands the map to the witness.

Q. According to that map, Mr. Gonzales, do you believe that it is possible for you, or any other man to go and place your foot on that land?
A. Well, I don't know; I cannot answer that.

By Mr. Favrot: I object if your Honor please, Mr. Gonzales is not here qualified to determine what the quality, or what the kind of land, beyond his general knowledge he has as the assessor of the parish. Whether he can go on it, or not, is immaterial to the matter before the court.
By the Court: The objection is sustained.

By Mr. Livaudais:

76 Q. Will you look at the map and state whether you can point out on this map Township 12, Range 17, Section 2?
A. Here it is, marked with a pencil cross.
Q. Is that surrounded by water?

By Mr. Favrot: If your Honor, please, I object to the question, on the ground that there is absolutely nothing in this petition that undertakes to define this property by any specie, or style, or description which will call for a specific quality or kind of land that is being involved in this case. There is nothing in the world,—

not an allegation in this petition that we are dealing with water, land out of water, or anything concerning the physical confirmation of this property. And for the second reason I object, on the ground that there is nothing in this record to show that the map being referred to is a map drawn from an actual survey of the property.

By Mr. Livaudais: Now, as to the last objection by Mr. Favrot, of the map not being a correct map, we will put Mr. Mundinger on the stand to prove that this is a correct map.

By the Court: What is the purpose of the question, Mr. Livaudais?

By Mr. Richardson: The purpose of the question is to prove the allegations of our petition; particularly, that the above described lands lie outside of the levee system which the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of St. Bernard Parish are building, or propose to build for the
77 purpose of draining the lands within the Drainage District established by said Board, and that said lands will not receive any benefit therefrom. This objection goes to the entire case. It is an exception of no cause of action really, and it must admit, for the purpose of argument, all the averments of our petition. It is as much to say, you prove all the averments of your petition, and yet you are not entitled to judgment. We offer this evidence for the purpose of showing that these lands belonging to Daniel Shaw are islands in the Gulf of Mexico, and for that reason they are not liable to a drainage tax.

By Mr. Favrot: I object to this kind of evidence going in on the question of benefits to be derived; and also object, on the ground that the attack started is in effect an attack upon the validity of the taxes levied by the Bayou Terre-aux-Boeufs Drainage District; and is also, in effect, an attack upon the validity of the bonds issued by the Bayou Terre-aux-Boeufs Drainage District, which are to be paid with the proceeds of those taxes; and my objection is further, that the said bonds were voted, and the said taxes were voted, and the said bonds were issued and sold as set forth in the petition prior to a constitutional amendment adopted in November, 1912,
78 that was a sweeping validation of bonds previously issued, or previously authorized by a vote of the people, not contested on any ground of fraud; and there being no issue of fraud raised in this case, no evidence is admissible until it is shown that these bonds do not come within the validating effects of Article 281 of the Constitution.

By the Court: The Court considering the pleadings, and the authorities submitted, and the law governing the situation of this Board, can arrive at but one conclusion, and that is to sustain the objection.

By Mr. Richardson: Now, in order to have our record complete, we will offer a notice of evidence: Plaintiff offers and files in evidence, Tax Bills and Notices from the Sheriff of intention to seize and sell, marked exhibits "P-3" & "P-4."

Mr. A. G. MUNDINGER, being duly sworn by the Clerk of Court, as a witness on behalf of the Plaintiff, deposes and says:

Direct examination by Mr. Livaudais:

By Mr. Livaudais: This is simply to get the record correct.

Q. Mr. Mundinger, you are the engineer of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, are you not?

A. No, sir, not at present.

Q. Well, aren't you the surveyor, the one they employed?

A. Well, I was until the end of the first year; they dispensed with my services since the first year.

79 Q. You were the one in charge of whatever survey work they did?

A. I was the last man in charge of the work.

Q. Do you know the proposed lines of the levee district, or drainage district?

By Mr. Favrot: I object, if your Honor please, on the ground that there is no levee district involved in this case.

By Mr. Livaudais: Well, change it to Drainage District.

Mr. Favrot: All right.

By Mr. Livaudais:

Q. Do you know the proposed lines of the Drainage District?

A. The district was formed before I became engineer for the Board; but I have seen the description of the district.

Q. Will you look at this map, and can you tell from that map what is the district?

A. I can trace from this map the district as it was drawn up,—the limits as drawn up by the Police Jury.

Q. Well, will you do that on this map for me? We don't want it just exactly to the line; it is just to show within a radius?

A. I was looking at a record there, and I would like to have it to refresh my recollection. It is in the petition.

The document is handed to the witness.

(By the Witness:)

A. It is the same as set forth in the answer of the defendant-.

Q. Now, can you show me on that map the district as laid off by the Bayou Terre-aux-Boeufs Drainage District for the purposes of drainage,—what does it take in?

A. I am not familiar with this map, and I just want to locate it. You want me to draw a pencil line, Mr. Livaudais?

Q. Yes, just draw a pencil line?

The witness is handed a clean map which has nothing written on it, and marks off the line.

80 Q. Since you were appointed, did you make a survey of the proposed leveeing of the district?

By Mr. Favrot: If your Honor, please, I object to the question,

on the ground that this is a drainage district, and not a levee district, and I object to any evidence going in to show, or to suggest that there is a line of levees to be constructed, or has been constructed in this Drainage District in contradistinction to canals, or drainage work.

By Mr. Richardson: We are offering this evidence to complete our record to carry it to the Supreme Court.

By the Court: The objection is overruled.

By Mr. Favrot: To which ruling of the Court, counsel for intervenor excepts, and makes this note in lieu of a formal bill of exceptions.

A. I can only answer that by saying that I made quite a number of surveys down there, but I never made a complete survey of the whole Drainage District. I surveyed lines that were necessary as the work progressed. As the work progressed at different times I made the necessary surveys.

By Mr. Livaudais:

Q. I am not referring to any special districts which were created, or any sub-drainage districts which were created; I am referring to the general drainage district inaugurated under this Drainage Commission of the Bayou Terre-aux-Boeufs Drainage District. Did you ever make a survey of work that they were to do?

A. Now Mr. Livaudais, I want to ask you a question, as I just want to get your idea exactly: Do you want to know whether there was a survey made around the complete Drainage District?

81 Q. Yes?

By Mr. Favrot: I want to renew my objection.

The Court: The court makes the same ruling.

A. My answer is just the same; I made whatever surveys were necessary. For whatever particular work we proposed to do, I made surveys to do that particular work.

By Mr. Livaudais:

Q. Where does your line of levee run,—from what distance?—Say from this point, from Bayou Terre-aux-Boeufs? What distance does your levee district extend back from Bayou Terre-aux-Boeufs?

By Mr. Favrot: I make the additional objection, that this being a Drainage District exclusively, and so alleged to be a Drainage District, and there not being shown any levee line through this district, it is incompetent to ask this witness where he proposed to run a levee line, where there is only drainage work in contemplation.

By the Court: The objection is overruled.

By Mr. Favrot: To which ruling of the court, counsel for intervenor excepts, and makes this note in lieu of a formal bill of exceptions.

A. Well, I was supposed to be staking out the canal,—the work we were doing.

By Mr. Livaudais:

Q. Was it a canal, or a levee?

A. It was both, a canal and a levee,—it was necessary in digging a canal to deposit the material.

Q. How far does this canal, or rather this levee, run back from Bayou Terre-aux-Boeufs?

82 A. There is one line located forty arpents on either side of Bayou Terre-aux-Boeufs.

Q. Now, when you get to the extreme rear of the parish, will you point out on that map where that levee system goes to—what point—Where does that extend on the line in the rear of the parish?

A. In answer to that I would say that the line though not definitely located (we could not locate them definitely, because we intended changing those lines, if necessary, to conform to the topography and conditions). We drew a line on there to have a base to figure on, and then we figured that we could change that line wherever we found it necessary, and for that reason it was not very definitely located.

Q. Mr. Mundinger, how far away are the lands of the plaintiff in this case, within those lines as laid off by you and the Commission?

By Mr. Favrot: I object, if your honor please, on the ground that if the purpose of this question is to ascertain, or to go into the question of benefits as shown, for the property of the plaintiff, relatively to the drainage system being inaugurated by the District, that while it has been disposed of by the court and is covered by the ruling of the court, there is no reason why it should be asked a second time.

Mr. Favrot: I will admit that your property is located beyond the canal lines as presently constructed by the Bayou Terre-aux-Boeufs Drainage District in its work so far as it has been entailed.

83 Mr. Livaudais: And then, as set forth in your answer, the district is not a pumping or levee district?

Mr. Favrot: The answer speaks for itself.

Admission: It is admitted that a tender was made to the Sheriff and ex-Officio Tax Collector of all the taxes due, and penalties, as set forth in the petition, less the drainage tax in contestation.

Plaintiff rests, with right reserved to offer rebuttal testimony.

Plaintiff's Rebuttal Testimony.

Admission: It is admitted that there was an application made by Mr. Daniel Shaw, through his counsel, to redeem these properties from the State of Louisiana, and that the Register declined to do so unless all of these taxes, and particularly the acreage tax, was paid.

It is admitted that the State and Parish taxes, all except the drainage tax, and acreage tax, were tendered to the Sheriff for the years of 1911 and 1912.

Counsel for plaintiff offers in evidence letters marked "P-4" and "P-5."

Plaintiff closes.

Endorsed on reverse: No. 900—29th Jud'l District Court, Parish of St. Bernard.—Daniel Shaw vs. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District.—Dr. Paul Hill Saunders, Intervenor.—Evidence of Plaintiff,—Received and filed February 27th, 1914.—(Signed) W. D. St. Alexandre, Dy. Clerk.—"A"—Detached from and forming part of this Transcript of Appeal.—(Signed) W. D. St. Alexandre, Dy. Clerk.

84 29th Judicial District Court, Parish of St. Bernard, State of Louisiana.

No. 900.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT, Dr. PAUL HILL SAUNDERS, Intervenor.

Testimony Taken in Open Court on This 9th Day of February, 1914, in Open Court, in the Above-entitled and Numbered Cause, on Behalf of Defendants, Before the Honorable R. Emmet Hingle, Judge Presiding.

Appearances:

Mr. O. S. Livaudais, and Messrs. Richardson & Soule, Attorneys for Plaintiff.

Mr. N. H. Nunez, Attorney for Defendants.

Messrs. P. A. Sompayrac and H. L. Favrot, Attorneys for Intervenor.

Reported by D. O'Day, Official Stenographer.

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Offer of Exhibits P-6 & P-7 ..... " 89–90

Mr. WILLIAM P. LANGWORTHY being duly sworn by the Clerk of Court, as a witness on behalf of the Defendants, deposes and says:—

Direct examination by Mr. Favrot:

Q. Mr. Langworthy were you ever employed by the Bayou Terre-aux-Boeufs Drainage District?

A. Yes, sir, I was employed to make one small survey.

Q. What was that work for?

85 A. It was to run a canal line West from Bayou Terre-aux-Boeufs. The canal was never staked out or dug.

Q. Mr. Langworthy, do you know by location where the lands of Mr. Shaw are?

A. I recognized one description there.

Q. Look at the description, please?

A. All of Section 2, in Township 12, South Range 17 East.

Q. Are those lands located in the Gulf of Mexico?

A. I should not, certainly, call that the Gulf of Mexico.

Q. Are those lands islands?

A. I should not designate them as islands.

Q. Are those lands covered with water, in the average sense of swamp land?

A. As far as I know, they are about the same nature as other marsh lands in this territory. There may be a little more, or a little less water on them. There has never been made by my firm an accurate survey of these lands. As located on the map they show considerable water, but this is of no significance to us, because such a body of water as is shown might be either a foot deep, or five feet deep. Our experience has been that the maps and plats of the original surveys are very inaccurate, and we never use them as giving correct topographical conditions.

Q. You are satisfied that these sections as described in this petition are not in the Gulf of Mexico?

A. Yes, sir.

Cross-examination by Mr. Livaudais:

Q. Will you look at this map which was handed to Mr. Mundinger, who has testified in this case, and state if upon that map you can locate the lands of Mr. Shaw? Take section 2, township 12, range 17, East?

A. I am unable to locate these lands exactly on the map handed me without extending the lines of the sections and townships. I cannot tell from this map.

86 Q. Can you tell by looking at the parish map?

A. Yes, sir, I think I could.

Q. Will you look at that map?

Witness looks at the parish map, and locates section 2, in township 12, range 17 east.

Q. Now, according to that map is it shown to be surrounded by water?

By Mr. Favrot: Objected to. I only asked Mr. Langworthy whether those lands were located out in the Gulf of Mexico. Now as to the physical condition of the land, I object to any evidence.

By the Court: The objection is overruled.

A. According to the geographical description that section is not an island, according to my understanding of a geographical description of an island.

By Mr. Livaudais:

Q. But does the map show that this section that you have referred

to, Section 2, in Township 12, Range 17 East, is surrounded by various bodies of water?

A. As the question is put I cannot answer that it is surrounded by various bodies of water. In any direction from that section one would encounter water, but in a great many directions one would have to go over several miles of sound land before reaching water.

Q. You say "sound land"?

A. Sound land.

Q. What do you mean by the words "sound land"?

A. In referring to this land, I would take this here in, (Witness pointing to Section 12), as being sound land.

Q. What I want you to define is, what is sound land, so far as that land is concerned; what do you mean by that?

A. You wish me to give a technical description of what I
87 mean by sound land?

Q. Yes; in that particular instance?

A. I mean in this particular instance land by which no water is shown on the map; that is what reference I had in using those words.

By Mr. Richardson:

Q. Those are lands bordering on Lake Borgne, are they not?

A. Those are lands located near Lake Borgne.

By Mr. Livaudais:

Q. Now, will you see if you can locate the description of land as secondary referred to in plaintiff's petition?

A. All of Sections 1, 2, 11, 12 & 14, in Township 16, South Range 17 East.

Q. Is a part of these sections in the Gulf of Mexico?

A. No, sir.

Q. Will you point them all out—Is Section 12 in the Gulf of Mexico?

A. No, sir.

Q. What do you call that—What is this? (Pointing to the map.)

A. That is marked Bayou Piquant.

Q. Do you see there where the section runs to? Look at Section 12; do you figure how far it runs into the Gulf, and what you call the bayou?

A. Bayou Piquant apparently cuts through the middle of it.

Q. And you say this portion,—the south portion of Section 12, is not the Sea?

A. Apparently, I misunderstood your question, but you mean, that practically the Southwest quarter of Section 12 was covered by water?

Q. Yes; and also whether it was the Gulf of Mexico waters, as shown on this map?

A. I should say that the Southwest quarter of Section 12 was covered by water. The question as to whether these waters were
88 the Gulf of Mexico is rather a fine geographical question; I define this body of water as being the mouth of Bayou Piquant. These are evidently shoal waters, by this map.

By Mr. Livaudais: Now may it please your Honor, in connection with the testimony of the witness, we would like, if it were possible to offer this whole map in evidence, but as that cannot be done, we offer an abstract of that portion of the map which shows the entire topography of that country, and these particular sections involved in this suit, to be marked exhibit "P-6."

By Mr. Favrot: I object if your Honor, please, if the purpose of the offer of the map is to show the physical condition of the property, or the benefits that the property is not to receive from the drainage tax. It is not a judicial question, but a legislative question. My sole purpose in offering Mr. Langworthy was to refute the repeated suggestions that these lands were islands in the Gulf of Mexico.

By the Court: The court overrules the objection; but does not infer or mean that this ruling shall refer to the question of benefits accruing. The Court permits the filing of the abstract, limiting the ruling that it should not apply to the question of benefits.

89 By Mr. Livaudais:

Q. Will you kindly look at the map and see if you can locate the thirdly described piece of real estate in plaintiff's petition described, which is Section- 20 & 22, in Township 15, South Range 17.

The witness points to the two sections referred to in the petition, as on the map.

By Mr. Livaudais: In connection with the testimony of the witness, we also desire to make the same offer of that portion of the map which shows the condition of the country, and the sections referred to and pointed out by the witness.

By Mr. Favrot:

Q. Mr. Langworthy, all of these lands you have referred to, and shown here, are they lands that can be reclaimed?

A. I would say, in a general way, that all of the lands that I have pointed to can be reclaimed.

By Mr. Richardson:

Q. Mr. Langworthy, these lands that you pointed to—that you last mentioned, in Section 16, Range 17, can they be affected in any way by the proposed canal drainage and levees to be built?

By Mr. Favrot: Objected to.

By the Court: The objection is sustained.

By Mr. Richardson: To which ruling of the Court, counsel for plaintiff excepts, and makes this note in lieu of a formal bill of exceptions.

By Mr. Richardson:

Q. I ask you, again, can these lands be affected by the proposed canal to be dug by the Bayou Terre-aux-Boeufs Drainage District?

90 By Mr. Favrot: Objected to.

By the Court: The objection is sustained.

By Mr. Richardson: To which ruling of the court, counsel for

plaintiff excepts and makes this note in lieu of a formal bill of exceptions.

By Mr. Livaudais: In connection with the testimony of the witness we have not offered this map that Mr. Mundinger marked there; we offer this map in evidence, marked exhibit "P-7."

By Mr. Favrot: I make the same objection as previously urged.

By the Court: The court makes the same ruling.

The case was here closed.

Endorsed: No. 900—29th Jud'l District Court, Parish of St. Bernard—Daniel Shaw vs. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District.—Dr. Paul Hill Saunders, Intervenor.—Evidence for defendant.—Received & filed Feby. 29th, 1914.—(Signed) Jas. D. St. Alexandre, Clerk.—"B"—Detached from and forming part of this Transcript of Appeal.—(Signed) W. D. St. Alexandre, Dy. Clerk.

29th Jud'l District Court, Parish of St. Bernard, State of Louisiana.

No. 900.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE TERRE-AUX-BOEUFS DRAINAGE DISTRICT; DR. PAUL HILL SAUNDERS, Intervenor.

91 *Testimony and Notes of Evidence Taken in Open Court on This 9th Day of February, 1914, in the Above-entitled and Numbered Cause on Behalf of Intervenor, Before the Honorable R. Emmet Hingle, Judge Presiding.*

Appearances:

Mr. O. S. Livaudais, and Messrs. Richardson & Soule, Attorneys for Plaintiff.

Mr. N. H. Nunez, Attorney for Defendants.

Messrs. P. A. Sompayrac and H. L. Favrot, Attorneys for Intervenor.

Reported by D. O'Day, Official Stenographer.

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By Mr. Favrot: Now if your Honor, please, on behalf of both the defendant, and the intervenor, we want to offer and file in evidence, a certified extract from the record of the Recorder of Mortgages of the Parish of St. Bernard, showing the adjudication to the State of Louisiana in June, 1912, for the taxes of 1911; said adju-

dication being recorded in Book 23, Folio 304, of the properties of Daniel Shaw, adjudicatee, to the State; said properties being described in the petition and answer filed in this cause.

92 By Mr. Livaudais: Objected to, on the ground that the answer of the defendant admits the ownership in plaintiff; and further, on the ground that the Tax Deed, itself, would be the best evidence.

By Mr. Favrot: I am coming to that.

By Mr. Favrot: I offer and file in evidence, a certified copy of the Deed adjudicating this property to the State of Louisiana.

By the Court: The Court refers the objection to the effect.

By Mr. Favrot: I want to offer in evidence the record, showing three bond issues of the Bayou Terre-aux-Boeufs Drainage District, as authorized by the various elections held in 1909, 1909 & 1912, authorizing (1) a bond issue of Sixty thousand dollars, based on a three cent an acre tax; (2) a bond issue of One hundred and sixty five thousand Dollars, based on a six cents an acre tax; and (3), a bond issue of Five hundred thousand dollars, based on a sixteen cents an acre tax; the first bond issue having been authorized at an election held on June — 1909; the second election having been held December 28th, 1909, and the third election having been held on August —, 1912.

By Mr. Richardson: We admit the correctness of the offer, but at the same time say it is irrelevant.

Mr. H. L. Favrot, being duly sworn by the Clerk of Court, on behalf of Intervenor, deposes and says:—

93 There were sold through me, as counsel representing the Bayou Terre-aux-Boeufs Drainage District, in the year 1909, an entire issue of bonds, aggregating Sixty thousand Dollars, at par, and accrued interest to the Whitney-Central National Bank, said bonds having been issued as the result of the authority conferred by an election held on June —, 1909. There were by the Bayou Terre-aux-Boeufs Drainage District One Hundred and sixty five thousand Dollars of bonds, at par, to the Interstate Trust & Banking Company; said bonds having been authorized and issued as the result of an election held on December 28th, 1909. There were sold to various parties bonds aggregating Two hundred and fifty thousand Dollars at the time that this suit was filed, of the issue of Five hundred thousand Dollars, authorized at an election held on August —, 1912. I don't know the names of the parties; I can name some of them if you insist. Some of them are held by the Interstate Trust & Banking Company; some of them are held by the Hibernia Bank & Trust Company; some of them are held by the Whitney-Central National Bank; some of them are held by Messrs. Joyce & Arpin; and some of them were sold and held by the Southern Dredging Company. And these bonds were all sold through me as representing the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District at that time, and are therefore to my personal knowledge.

By Mr. Richardson: Objected to, on the ground of irrelevancy; that it has absolutely nothing to do with this case; that our suit to prevent these islands from being sold would not affect these bonds in any way, and that the bond matter is unnecessarily brought into this case.

By the Court: The court refers the objection to the effect.

By Mr. Livaudais:

94 Q. I understand you to say, that these bonds were sold at par?

A. Yes, sir.

Mr. Millard C. Baker, being duly sworn by the Clerk of Court, as a witness on behalf of Intervenor, deposes and says:—

Direct examination by Mr. Favrot:

Q. Mr. Baker, do you know the three bonds by numbers that are claimed by the Intervenor in this case?

A. I do not.

Q. Have you ever seen those numbers?

A. I have seen them, but I don't remember what they are.

Q. Nos. 5, 8 and 105?

A. I do know them.

Q. Were these bonds ever handled by you?

A. They were.

Q. Whom did you sell them to?

A. I sold those bonds to the Interstate Bank.

Q. And do you know where they are now?

A. I do not.

Q. You sold them to the Interstate Bank?

A. I did.

Q. You got them from whom?

A. I got them from the Frainage Board for work done.

By Mr. Richardson: I make the same objection to this evidence, as previously urged.

By the Court: The court makes the same ruling.

No cross examination.

Admission.

It is admitted that Dr. Saunders acquired these three bonds Nos. 5, 8 & 105 from the Interstate Bank.

By Mr. Richardson: I have no objection, except that it is irrelevant.

Intervener here rests.

95 Endorsed: No. 900—29th Jud'l District Court, Parish of St. Bernard—Daniel Shaw vs. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District,—Dr. Paul Hill

Saunders, Intervenor,—Evidence for Intervenor,—Filed Febry. 9th, 1914,—(Signed) Jas. D. St. Alexandre, Clerk,—"C"—Detached from and forming part of this Transcript of Appeal,—(Signed) W. D. St. Alexandre, Dy. Clerk.

96 Proceedings Had in the Supreme Court of the State of Louisiana.

(Transcript of Appeal Filed.)

Supreme Court of Louisiana.

No. 20832.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

Filed August 10, 1914. (Signed) Paul E. Mortimer, Clerk.

(Agreement to Complete Record.)

Supreme Court of the State of Louisiana.

No. 20832.

DANIEL SHAW

—

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUF DRAINAGE DISTRICT.

To the Honorable Judges of said Court:

Now comes Dr. Paul Hill Saunders, Intervenor, who through undersigned counsel files herewith three certified copies of certificate filed in Dist. Court, showing that the copies of promulgation of elections appearing on pp. 37 et seq. are true and correct copies of the proceedings of the Board of Comm. promulgating said elections.

Wherefore intervenor prays that in order to complete the transcript the said copies be duly filed. He prays for full and general relief.

By his Attorneys,

H. L. FAVROT &
(Signed) PAUL A. SOMPAYRAC,
Per P. A. S.

97 It is hereby agreed by counsel for Plaintiff in above case that the 3 certified copies of certificate by Ben F. Estopinal, Sec'y of Board of Com. of Bayou T.-aux-B. shall be filed in

the transcript in above entitled case in conformity with agreement in record, Tr. p. 58.

(Signed) RICHARDSON & SOULE,
Att'ys for Appellant.

New Orleans, La., Sept. 9th, 1914.

(Endorsed:) No. 20,832—Daniel Shaw vs. Board of Comm. Bayou T.-aux-B. D. D.—Agreement to Complete Record—Supreme Court of La., Appeal from Dist. Court St. Bernard Parish—Filed Sept. 10, 1914—(Signed) John A. Klotz, Dep. Clerk.

(*Copy of Promulgation of Elections.*)

STATE OF LOUISIANA,
Parish of St. Bernard:

Be it Known that I, the undersigned Secretary of the Board of Commissioners of Bayou Terre-aux-Boeufs Drainage District, do hereby certify that the copies appearing in Transcript of Appeal in case No. 20,832 of the Supreme Court of Louisiana, entitled Daniel Shaw vs. Board of Commissioners of Bayou Terre-aux-Boeufs Drainage District, at pp. 37 et seq., 49 et seq., and 53 et seq., are true and correct copies of the proceedings of the aforesaid Board of Commissioners, as they appear in the Minute Book of said Board, promulgating the elections, as stated therein of June 16th, 1909, December 30th, 1909, and February 9th, 1912, respectively.

Witness my signature at St. Bernard, Parish of St. Bernard, Louisiana, this 3rd day of September, 1914.

(Signed) BEN. F. ESTOPINAL,
Secretary Board of Comm. Bayou Terre-aux-Boeufs Drainage District.

98 A true copy of the original filed at the request of P. A. Sompayrac, Attorney, on the 5th day of September, 1914, in the suit entitled Daniel Shaw vs. Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District, No. 900, of the docket of the 29th Judicial District Court of Louisiana for the Parish of St. Bernard.

Parish of St. Bernard, September 5th, 1914.

(Signed) W. D. J. ALEXANDRE,
[SEAL.] *D'y Clerk.*

Filed Sept. 10, 1914. (Signed) John A. Klotz, Dep. Clerk.

(*Motion to Advance Case.*)

La. Supreme Ct.

No. 20832.

DAN'L SHAW
vs.
TERRE O'BOEUF LAND DIST.

Appeal from Dist. Court Parish of St. Bernard, La.

On motion of Richardson & Soule, of counsel for appellant in above entitled & No. cause and on suggesting to the Court that there is called in question herein by def't the legality of a State & Parish tax herein and under the provisions of Sec. 1915 of the R. S. of the State, this cause should be placed upon the Summary Docket of this court for hearing.

It is ordered that the clerk of this Court place this cause upon the Summary Docket of this court to be tried by preference.

Before me the undersigned authority, personally came and appeared F. L. Richardson, who being sworn, doeth say that he is one of the counsel herein and that the allegations made are true & correct & that he makes this affidavit in the stead of his client.

(Signed) FRANK L. RICHARDSON.

99 Sworn to and subscribed before me this the 17 day of February, A. D. 1915.

(Signed) PAUL E. MORTIMER,
[SEAL.] *Clerk Sup. Ct. La.*

(Endorsed:) No. 20,832—Supreme Court of Louisiana—Daniel Shaw vs. Board of Commissioners, etc.—Motion to advance—Filed Feb'y 17, 1915—(Signed) Paul E. Mortimer, Clerk—Entered Feb'y 19, 1915—(Signed) Paul E. Mortimer, Clerk.

(*Order Granting Motion to Advance.*)

(Extract from Minutes.)

At Chambers.

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS, etc.

NEW ORLEANS, Friday, February 19th, 1915.

On motion of Richardson & Soule, of counsel for appellant in the above numbered and entitled cause: It is ordered by the Court that

this cause be placed on the summary docket and heard with preference.

(*Motion to Dismiss Appeal.*)

Supreme Court of Louisiana.

No. 20832.

DANIEL SHAW
VS.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

Appeal from the Twenty-ninth Judicial District Court of Louisiana in and for the Parish of St. Bernard.

Motion to Dismiss.

On motion of Paul A. Sompayrac and H. L. Favrot, at-
100 torneys for Dr. Paul H. Saunders, intervenor, and on suggesting to the court that under the terms and conditions of Article 281 of the Constitution as amended by Act 192, of 1914, it is provided, "That all bonds heretofore issued under and by virtue of this Article 281 of the Constitution, by the governing authority of any subdivision, which have heretofore not been declared invalid by a judgment of a court of last resort in the State of Louisiana and more than sixty days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivisions issuing the same and no court shall have jurisdiction to entertain any question wherein their validity or constitutionality is questioned." And on suggesting to the court that all of the bonds at issue in this cause were authorized to be issued by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District long prior to the adoption of the said constitutional amendment, as shown on the face of the record in this cause, and on further suggesting to the court that it is also shown on the face of said record in this cause that more than sixty days elapsed after the issuance of said bonds and no suit was brought to contest the same and this suit was brought long after the lapse of sixty days, and on suggesting to the court that all bonds authorized by Article 281 of the Constitution, issued by any of the subdivisions of the State through their governing authority, were recognized and validated by the amendment to Article 281 of the Constitution incorporated in Act 192 of 1914 and on further suggesting to the court that intervenor is an innocent purchaser and holder of said bonds, as shown by the record herein, the said bonds having been validated and recognized by amendment to the Constitution under Act 132 of 1912, approved at the
101 November election of that year, and on further suggesting to the court that under the terms of this amendment, this court

is debarred from entertaining any question relating to the validity or constitutionality of said bonds.

It is ordered by the Court that the plaintiff in this cause, Daniel Shaw, do show cause on the 12th day of April, 1914, at eleven o'clock A. M. why the appeal in this cause should not be dismissed at appellant's cost.

(Endorsed:) No. 20,832—Daniel Shaw vs. Board of Comms. B. T. A. B. D. D.—Motion to Dismiss Appeal—H. L. Favrot and Paul A. Sompayrac for Dr. Paul Hill Saunders—Filed April 5, 1915—(Signed) John A. Klotz, Dep. Clerk.

(Cause Continued.)

(Extract from Minutes.)

NEW ORLEANS, Monday, April 12th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20832.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT; Dr. PAUL HILL SAUNDERS, Intervenor.

This cause not having been reached was ordered by the Court to be continued until to-morrow, April 13th, 1915.

(Cause Called and Continued.)

(Extract from Minutes.)

NEW ORLEANS, Tuesday, April 13th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20832.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT; Dr. PAUL HILL SAUNDERS, Intervenor.

This cause was upon the request of counsel, ordered by the Court to be continued until Wednesday, April 14th, 1915.

102 (*Cause Called, Argued, & Submitted.*)

(Extract from Minutes.)

NEW ORLEANS, Wednesday, April 14th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT, Dr. PAUL HILL SAUNDERS, Intervenor.

This cause came on this day to be heard: Mr. F. L. Richardson opened for the plaintiff, appellant; Mr. H. L. Favrot replied for Dr. P. H. Saunders, Intervenor; and Mr. Richardson closed. The court then took the cause under advisement.

(*Final Judgment.*)

(Extract from Minutes.)

NEW ORLEANS, Tuesday, June 29th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Neill, Associate Justices.

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

The judgment appealed from is, therefore, affirmed.

103 (*Opinion of the Court.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, Tuesday, June 29th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice; Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Charles A. O'Niell, Associate Justices.

His Honor, the Chief Justice, pronounced the Opinion and Judgment of the Court in the following case:

104 Tuesday, June 29th, 1915.

Mr. Chief Justice Monroe.

No. 20832.

DANIEL SHAW
VS.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

Appeal from the 29th Judicial District Court, Parish of St. Bernard, Hingle, Judge.

Statement of the Case.

In June 1913, plaintiff obtained a preliminary injunction, restraining the Sheriff of St. Bernard Parish from selling, for acreage taxes of 1911, 1912 & 1913, some 4000 acres of land which he had acquired in that parish in July, 1911, alleging that he had offered to pay all the taxes claimed, save those levied by the Board, here made defendant, for drainage purposes, and that his offer had been refused; and, further alleging as follows:

"That all of the * * * lands lie outside of the levee sys-
"tem which the Board * * * are building, or propose to build,
"for the purpose of draining the lands within the district established
"by said Board, and * * * will not receive any benefit there-
"from * * *; that his said lands have been erroneously assessed
"for the said drainage tax, and the assessments * * * for the
"years 1911, 1912 and 1913 should be canceled, * * *, for the
"reason that, in accordance with section 21, of act 317 of 1910, and
"section 21 of act 219 of 1912, such acreage tax shall only be im-
"posed upon such lands * * * as are especially benefited by
"the drainage, and his said * * * lands will not be benefited
"by the drainage contemplated by said Board."

He prayed for citation upon the Sheriff, the Board and the Assessor, for the perpetuation of the preliminary injunction, and for judgment ordering the cancelation of the assessment. The
105 Board, by way of exception, alleges that plaintiff's lands have been adjudicated to the State, in 1912, for taxes of 1911, and have not been redeemed, and, hence, that plaintiff is without interest to prosecute the suit, but, in the next paragraph (with which the answer begins), it "acknowledges that the said Daniel Shaw is the owner of the lands."

Further answering, the Board sets up certain defenses, in which it is joined by Dr. Paul Hill Saunders, who has intervened as the owner of three bonds, of $1000 each, issued by the Board, and the

proceeds of which it expended in the work of drainage undertaken by it. Those defenses will be more particularly referred to and considered hereafter.

The facts, disclosed by the evidence and admissions, are as follows: In July 1908, the Bayou Terre-aux-Boeufs Drainage District was established, legally and politically, and delimited, territorially, and the Board of Commissioners, here made defendant, was organized and assumed jurisdiction of its affairs and of all the lands within its boundaries. In 1909, in order to obtain the money required for the drainage of the district, in accordance with its views, and with the view of a majority, in number and amount of the property tax payers, qualified to vote who conferred the authority at special elections, held for that purpose, the Board issued the bonds of the District, to the amounts of $60,000. and $165,000, respectively, having 40 years to run and secured by tax levies of 3 and 6 cents per acre upon all the lands in the district, which bonds were sold upon the market, at par, and the proceeds expended in the work of drainage.

The legality of the first bond issue, of $60,000, having been called in question, was affirmed by this Court in a decision handed down in June 1909 in the case of Baker vs. Board, 124 La. 216, and it was more than a year afterwards, and after the subsequent
106 issue of $165,000 of bonds and the levy of the 6 cent acreage tax for their payment, that plaintiff acquired his lands. In August 1912, the property tax payers authorized another issue of bonds, to the amount of $500,000, and the levy of a tax of 16 cents, per acre, upon all the land in the district for their payment, and $250,000 of the bonds are shown to have been sold upon the market. It has also been shown that the lands of the plaintiff were, and are, within the boundaries of the drainage district in question.

Plaintiff's Counsel offered testimony to the effect that his lands "lie outside of the levee system which the Board of Commissioners "of the Bayou Terre-aux-Boeufs Drainage District of St. Bernard "Parish are building or propose to build, for the purpose of drain-"ing the lands within the district established by said Board, and "that the lands will not receive any benefit therefrom."

And the following objection was interposed, by counsel conducting the defense, and sustained by the Court, towit:

"I object to this kind of evidence going in on the question of "benefits to be derived, and also object, on the ground that the attack "started is, in effect, an attack upon the validity of the taxes levied "by the Bayou Terre-aux-Boeufs Drainage District, and is, also, "in effect, an attack upon the validity of the bonds issued by the "Bayou Terre-aux-Boeufs Drainage District, which are to be paid "with the proceeds of those taxes; and my objection is, further, "that the said bonds were issued and sold, as set forth in the peti-"tion, prior to the constitutional amendment, adopted in November, "1912, that was a sweeping validation of bonds previously issued, "or previously authorized by vote of the people, not contested on "any ground of fraud, and, there being no issue of fraud raised "in this case, no evidence is admissible until it is shown that these

"bonds do not come within the validating effects of Article
107 "281 of the Constitution."

Thereafter, counsel conducting the defense placed of record the following admission, concerning the relation of the drainage work to plaintiff's land, towit: "I will admit that your property is located "beyond the canal lines, as *presectly* constructed by the Bayou Terre-"aux-Boeufs Drainage District, in its work, so far as it has been "entailed" (sic).

Counsel for plaintiff, when referring to the work done, and contemplated, by the defendant Board persistently used the word- "levee system," to which counsel for the defense objected, and insisted that the term "canal," or "drainage, system" should be employed. The evidence is uncontradicted to the effect that the work done has consisted of digging canals, and that levees have been constructed by the deposit of the earth excavated in so doing.

Opinion.

On Motion to Dismiss the Appeal.

The intervenor moves to dismiss the appeal, upon the ground that this Court is without jurisdiction to entertain it, by reason of an amendment to the Constitution, proposed by Act 192 of 1914, and adopted in November 1914, which reads, in part, as follows:

"That all bonds heretofore issued, under and by virtue of this "Article 281 of the Constitution, by the governing authority of "any subdivision, which have heretofore not been declared invalid "by a judgment of court of last resort in the State of Louisiana, "and more than sixty days have elapsed since the promulgation of "the proceedings evidencing the issuing of said bonds, are hereby "recognized and declared to be valid and existing bonds and obli-"gations of the district or subdivision issuing the same, and no court "shall have jurisdiction to entertain any contest wherein their valid-"ity or constitutionality is questioned."

108 This suit had been pending in the district court for some weeks before Act 192 of 1914 was passed, and the appeal had been lodged in this Court for several months before the amendment proposed by that act was adopted; nevertheless, if the amendment, so adopted by the sovereign people of the State, had declared that no existing court in this State should, thereafter, have jurisdiction of any cause, civil or criminal, it would be difficult to find the authority under which any one could exercise the functions of a judge of a state court. But, in such case, the amendment would not be so interpreted as to deprive a litigant of all remedy for the protection of life, liberty and property, if it could have been avoided; and, so, in this case, we will not assume that it was the purpose of the amendment to deprive any citizen of all remedy against the alleged unlawful deprivation of his property which the law afforded him and which he had invoked when the amendment was adopted and to leave him altogether without remedy. The language does not so read; it specifies "any contest wherein their legality or con-

stitutionality" (meaning the legality or constitutionality of certain bonds issued under the authority of Art. 281 of the Constitution) "is questioned."

But, the plaintiff herein has not questioned the legality or constitutionality of the intervenor's bonds. He was engaged when the intervention was filed, in trying to prevent the sheriff from selling his lands, for a tax, which, he alleges, was erroneously and unlawfully imposed upon it, and, being erroneously and unlawfully imposed, was erroneously and unlawfully assumed to have been pledged for the payment of those bonds. A contract represented by a bond or note, however, is one thing, and the pledge, whereby the bond or note is said to be secured, is another, and an attack upon the pledge does not, of necessity, involve an attack upon the main contract. The motion to dismiss is therefore overruled.

109 On the Exception.

The allegation in the exception is, that plaintiff is without interest, because the property claimed by him had been sold to the State for taxes and had not been redeemed, and, in support of that allegation, defendant offered a sheriff's deed, showing the alleged sale, which was admitted over plaintiff's objection, that defendant, in the same pleading with the exception (as, also, the intervenor), had admitted that plaintiff owned the property. We are of opinion that the objection should have been sustained. Conflicting allegations in pleadings are construed against the pleader.

On the Merits.

In 1909, when a majority, in number and values, of the property tax payers of the district who were qualified to vote authorized the bond issues, of $60,000 and $165,000, respectively, and the 3 and 6 cent, acreage, taxes, and when the bonds were issued and the taxes levied, the constitutional provision by which the matter was governed was that found in the amendment proposed by act 122 of 1906, and, thereafter, adopted, which confers upon Drainage District the power to levy acreage taxes and issue bonds, in the following terms, towit:

"Shall have the further power and authority to levy and assess "annual contributions or acreage taxes for the purpose of provid-"ing and maintaining drainage systems on all lands situated in such "districts, not exceeding twenty five (25¢) cents per acre, for a "period not to exceed forty (40) years, when authorized to do so by "a vote of a majority in number and amount of the property tax "payers of said districts, qualified to vote as electors under the laws "of this State, voting at an election held for that purpose, as pro-"vided in the first part of this article, and said drainage districts, "through the boards of Commissioners thereof, may incur indebted-
"ness and issue negotiable bonds therefor, payable in principal
110 "and interest out of, and not to exceed in principal and in-
"terest, the aggregate amount to be raised by said annual con-"tributions during the period for which the same are levied."

It is not here pretended that the foregoing provisions of the Constitution, or those of the enabling statutes, in force in 1909, were not complied with, either in the creation and delimitation of the Bayou-Terre-aux-Bocufs Drainage District, or in the issuance, by the Board of Commissioners of that District, of the bonds and the levying of tax levy was required to be made, annually, in order to meet the changing conditions, resulting from the reduction of the debt, by the payment, from time to time, of the bonds, the action of the property tax payers, in authorizing, and of the Board, in issuing, the whole amount of the bonds and declaring the whole amount of the taxes pledged for their payment, operated to impose upon every acre of land in the district a liability for its proportion of that debt; and the plaintiff herein, thereafter, acquired his land, subject to that condition. If it be said that he has, at least, the right that his author in title, who owned the lands when the tax was voted and levied, would have had, to contest the validity of the tax, upon the ground that the lands would receive no benefit from the drainage and had been "erroneously assessed for said tax, * * * for the reason that, in accordance with section 21 of act 317 of 1910 and Section 21 of Act 219 of 1912, such acreage tax shall only be imposed upon such lands in the district as are especially benefited by the drainage," the answer appears to be, that the taxes for the payment of the bond issues of $60,000 and $165,000, respectively, were levied and pledged before the acts of 1910 and 1912 were passed, and that they, as, also, those constituting the authorized bond issue of $500,000, were levied under, and in accordance with the requirements of Art. 281 of the Constitution, amended as proposed by Act 122 of 1906, and
111 authorizing such levy, within the limit of 25 cents per acre, "upon all land situated within such districts."

In the case of City of Lafayette vs. Bank of Lafayette, recently decided (137 La. —, 68 So. 238), the question presented was, whether the City of Lafayette could lawfully impose a tax upon the property within its corporate limits, for the building and maintenance of public roads outside of those limits, and this Court had occasion to distinguish between the power of the Legislature, in the matter of taxation, and the power of the Sovereign, for, in that case, as in this, the power to levy the tax came directly from the Constitution, and not from the Legislature. The opinion quotes Judge Dillon (inter alia) as follows:

"Taxation implies, as we have seen, an imposition for a public "use, and it also implies that the imposition shall be upon some "system of apportionment, so as to secure uniformity among those who "are, or ought to be, subject to the particular tax or assessment. "* * * But, where the imposition is properly a tax, and no "specific or express constitutional limitation exists, the power of the "Legislature is supreme and without any theoretical bounds. If "the right to impose a tax exists, says the Supreme Court of the "United States, "it is a right which, in its nature, acknowledges no "limit; and the reason is that the needs of the public or of the govern-"ment, ordinarily, have no bounds set to them." Dillon Mun. Corp. (4th Ed.), Vol. 2, p. 896; §737.

We may say, here, as was said (quoting in part) in the case thus cited:

"In the instant case, there is no question, either of "mere legisla-"tive authority," or of private interest involved, for the grant of "authority comes direct from the constitution"; the work to which the "taxes are to be devoted is a public work; and, whether they would "fall equally upon all persons and property affected, in pro-
112 "portion to the benefit received, was a matter with reference to which the power of those who adopted the Constitutional amendment of 1906 (that is to say—the sovereign people of the State) was supreme. Again, it has, several times, been held by this Court that the creation of a drainage district and the distribution of the burden of taxation for its drainage involves the exercise of legislative power, and that court will not undertake to substitute its judgment for that of the political body by which the power has been exercised, merely because of a difference of opinion as to the policy or expediency of its action, or, because all persons affected do not receive the same measure of benefit. "Judicial judgment" (said the Court, in one case) "is not to be substituted, lightly, for legislative judgment. The benefits, contemplated need not be direct nor immediate." De Gravelle vs. Iberia and St. Mary Drainage District, 104 La. 703; Bernard vs. Portage Drainage District, 130 La. 640; Myles Salt Co. vs. Board of Commissioners, 134 La. 903; George et al. vs. Sheriff, 45 A. 1232; Hill et al. vs. Sheriff, 46 A. 1566; Cooley on Taxation, pp. 428-9. Still another recognized rule of law which is to be taken into consideration is, that the State, through its Legislature, and, a fortiori, through the people, acting directly in their Sovereign capacity, may compel its political subdivisions to pay debts legitimately contracted, and, for that purpose, to levy taxes upon the property within their respective jurisdictions. Forman vs. Sewerage & Water Board, 135 La. 1037 (quoting McQuillan on Municipal Corporation, Vol. 1, p. 536, §237). And, since the bond issues of $60,000 and $165,000 were made, the people of the State have, by constitutional amendments, twice, in effect, affirmed their validity, and, once, in specific terms, declared that a tax for the payment of such bonds shall be levied. Thus, the amendment proposed by Joint Resolution 132, of 1912, and adopted in November of that year, provides that: "When bonds of any subdivisions have been heretofore issued for any of the purposes specified in Para-
113 graph 1, of this Article (which includes drainage), and issue has been authorized by the vote of a majority in number and amount of the property tax payers qualified to vote under the Constitution and laws of this State who voted upon the proposition to issue such bonds at an election held for that purpose, and where such bonds have been issued and sold by such subdivision for not less than the par value thereof, the said bonds * * * are hereby validated, ratified and confirmed; provided, that such bonds did not, at the time of their issue, exceed ten per centum of the assessed valuation of the property in such subdivision; and such bonds, hereby ratified, approved and confirmed, shall be deemed to be the valid and incontestable obligations of such subdivision, and a tax

for the payment of the principal and interest thereof and to create a sinking fund for their redemption shall be levied and collected in the manner and within the limits prescribed by said paragraph 1 of this Article. This entire article is to be considered a full grant of power to the subdivisions of the State, as set forth herein."

The issue of $500,000 of bonds was authorized by the tax payers, at an election held for that purpose, on August 26, 1912, and it is alleged by plaintiff that the authority to impose the tax for their payment was derived from the acts of 1910 and 1912, to which we have referred, but we do not so understand it. The tax was authorized before the act of 1912 became a law, in the parish of St. Bernard (the election having been held on August 26, and the act having been approved on July 11th, following, or, less than 20 days afterwards), and the scheme of taxation contemplated by Section 21 of act 317 of 1910 being entirely different from that contemplated by the constitutional amendment of 1906, in accordance with which the tax here in question was levied. The scheme proposed by the statute must have been intended as an alternative to
that provided for by the constitution and was, necessarily,
114 optional, and not compulsory, since the state could not have been intended to repeal the Constitution.

The case of Marceaux vs. Cameron Drainage District No. 3, 136 La. —, 67 So. 956, is based upon provisions of the Constitutional amendment of 1914 (other than that heretofore referred to) which contemplate the establishment of systems of "gravity" drainage, make it the duty of Drainage Commissioners to pursue a particular method in providing for both drainage and reclamation of lands which must be leveed and pumped and authorize a maximum acreage tax of $3.50 per acre.

It is evidence that the change in the law was made because it was thought that the rights, conferred, and obligations, imposed, by the new constitutional enactment had not been conferred and imposed by the old, which was true. And it is equally evident that the change was made by constitutional amendment, because it was thought, in view of the existing provisions of the constitution, that the General Assembly was powerless to make it, which was also true, but the amendment in question does not affect, or purport to affect, rights acquired under the Constitution, as it stood prior to the adoption of the amendment, and, hence, the decision in the Marceaux case has no bearing in this case.

Our conclusion, then, as relates to the tax of 16 cents per acre, levied for the payment of the bond issue of $500,000, as, also, the taxes of 3 and 6 cents per acre levied for the other bonds, is, that they were validly levied, under the amendment proposed by act 122 of 1906, upon "all lands situated in the Bayou Terre aux-Boeufs Drainage District," and that plaintiff has no standing to question their validity upon the grounds alleged in his petition.

The judgment appealed from is, therefore, Affirmed.

115 *Syllabus.*

(1) A Constitutional provision, which declares "that no court shall have jurisdiction to entertain any contest wherein is questioned the validity of bonds issued by any of the political subdivisions of the State, where such bonds have not been declared invalid by judgment of the Court of last resort in the State, and where more than sixty days have elapsed since the promulgation of the proceedings evidencing the issuance of such bonds," is to be construed strictly, and, so construed, does not devest the Courts of jurisdiction of a pending suit in which a litigant, making no attack upon the validity of such bonds, seeks to prevent the Sheriff from selling his property for a tax, thought by the Sheriff to have been levied for, and pledged to, the payment of the bonds, but the levying and pledging of which, for that purpose, the litigant denies.

(2) Conflicting pleadings are construed against the pleader; and, where, in the same paper, a defendant denies and admits that plaintiff is the owner of property of which he alleges himself to be the owner, he should not be permitted to introduce evidence in support of his denial of that which he also admits.

(3) Where the Constitution authorizes a Drainage Board to levy an uniform acreage tax upon "all lands" situated in its district, and the tax is so levied, and bonds are issued and sold upon the basis of the levy, one, who, thereafter, acquires land in the district has no standing to complain that the tax is invalid, on the ground that his property derives no benefit from the drainage, since the framers of a Constitution are not required to consider that view, though a Legislature may be. Moreover, it has, frequently, been held by this Court that the creation of a drainage district is a legislative, and not a judicial, function, and that the courts will not readily sub-
116 stitute their judgments for the judgments of drainage commissioners, upon complaints, that particular property is not benefited, or is not, immediately, or directly, benefited, save in cases where fraud or gross oppression is alleged and proved.

(4) The State, through its Legislature, and, a fortiori, through the people, acting, directly, in their sovereign capacity, may compel its political subdivisions to pay debts, legitimately contracted, and, for that purpose, to levy taxes upon the property within their jurisdictions.

117 (*Petition for Rehearing.*)

Supreme Court of La.

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE AUX BOEUF DRAINAGE DISTRICT et al.

Petition for Rehearing.

To the Honorable the Judges of the Supreme Court of the State of Louisiana:

The petition of Daniel Shaw, plaintiff and appellant in the above entitled case, respectfully applies for a rehearing of the judgment herein rendered, on the ground that the opinion and judgment of the Court is erroneous and is contrary to the law applicable to the facts disclosed by the record, as follows:

The Court failed to distinguish between the law applicable to an ad valor*u*m tax and an acreage tax.

Petitioner does not contend that his lands within the Parish are not bound for an ad valor*u*m tax to pay for drainage and other public works of the Parish, although his lands consisted only of islands many miles distant from the main land and approached only by sea going vessels.

But petitioner does say and urges before this Court that his lands are not assessable under the law for an acreage or special tax for an improvement such as digging a canal for drainage within a district of the Parish that cannot and will not affect or benefit his land, or the waters surrounding it, and which never was pretended or intended to benefit same.

This Hon. Court has before it a copy of the Parish map showing that petitioner's lands are islands and are not in the remotest way affected or benefited by the so-called local improvement consisting of a canal which does not approach any where near petitioner's lands.

118 If this were a tax based upon an assessed value, his property would unquestionably be liable for the payment of the bonds even though the land was forty miles distant from the mainland, or even though the work was done on the other side of the Mississippi River.

The Court in its reasons for judgment, at the beginning, agreed with plaintiff to the extent that it held that, "Plaintiff was not attacking the bonds issued under Art. 281 of the constitution but was claiming that the lands were not liable for the acreage tax which was claimed to be erroneously and unlawfully assessed against it."

The Court then holds: That it would be an attack upon the bonds, secured by mortgage executed prior to plaintiff's acquisition, for

plaintiff to show that these lands were at no time subject to the acreage tax, because of their not being benefited by the proposed canal.

If the Court finds that it is true, as stated, that plaintiff's lands could not and should not have been intended to be included in the acreage tax to secure these bonds, then plaintiff's lands should have been excluded from the tax and the right of the holders of the bonds be held not to have been impaired when it is shown that his lands were not intended to be and could not be drained.

It is admitted that the proof, and the admissions of counsel for defendants show, that the canal for which the tax was levied is a local improvement which cannot possibly affect or benefit petitioner's lands.

This being the case, it would be a virtual confiscation of property to pay for it by an acreage tax.

This Hon. Court further erred in citing the authorities named in its opinion for the reason that none of them apply to the case of plaintiff, as will be hereafter shown in the brief which petitioner proposes to submit. The cited authorities refer to cases of
119 ad valor*em* taxes and levee taxes and not to acreage taxes.

This Hon. Court further erred in holding that plaintiff in this action was seeking to change the drainage district or that he was seeking to impugn the motive of the Police Jury in creating it, and in referring to the case of Bernard vs. Bayou Portage, 130 La. —, in support of it, when it is held that this will only be done in cases where fraud is alleged.

This Hon. Court further erred in holding that the law and the facts of case were not the same as those in the case of Morceau vs. Cameron Drainage District recently decided by this Court, for the reason that it is not to be presumed that the bonds of the Intervener were intended to be secured by an acreage tax on land not susceptible of drainage and never intended to be drained. The question here raised is the same as in that case.

This Hon. Court further erred in holding that the question of benefit to the land was a legislative question and not a judicial one for the reason that the facts in this case are all admitted and the question here is one of law which the Court only should decide. It having been shown, and not disputed, that this canal was not a local improvement so far as petitioner's land was concerned and that it was not a drainage of land either by levees, pumps or canals, petitioner's land was not covered by the drainage laws of the State under the Constitutional amendments of the years 1906, 1909, 1910 and 1912 and petitioner could only be held liable for a general tax in proportion to the value of his property, which by Article 255 of the Constitution of 1898, and the present Constitution, is required to be equal and uniform. The case of the City of Lafayette vs. Bank, 137 La. 238, was not one where the right to levy an acreage tax was involved. The admitted facts clearly show that the taking of petitioner's property for this pretended public improve-
120 ment, which admittedly does not extend to or benefit petitioner's land, is in violation of Article 225 and Article 227,

and also Article 281 of the Constitution of 1913 in as much as it is not equal and uniform throughout the territorial limits of the district and is not a drainage tax since it was never intended to be used to drain petitioner's lands.

Wherefore petitioner prays that for these and other reasons which he will set forth in his brief to be hereafter filed, he be granted a rehearing and he further prays for all general and equitable relief.

(Signed) RICHARDSON & SOULE,
Of Counsel for Appellant.

(Signed) O. S. LIVAUDAIS,
Of Counsel.

(Endorsed:) No. 20,832—Supreme Court of La.—Daniel Shaw vs. Board of Commissioners of the Bayou Terre aux Boeuf Drainage District et al.,—Petition for Rehearing.—Filed July 13, 1915,—(Signed) John A. Klotz, Dep. Clerk.

(Rehearing Granted.)

(Extract from Minutes.)

NEW ORLEANS, Tuesday, November 2nd, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

Absent: Charles A. O'Niell, Associate Justice.

By the Court:

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

The rehearing applied for in this case is Granted.

121 *(Motion to Place Names as Counsel of Record.)*

In the Supreme Court of the State of Louisiana.

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS TERRE AUX BOEUFS DRAINAGE DISTRICT.

To the Honorable the Supreme Court of the State of Louisiana:

On motion of Howe, Fenner, Spencer & Cocke, and upon suggesting to the Court that Mr. Paul A. Sompayrac, Counsel of Record

herein for Dr. Paul H. Saunders, intervenor, has withdrawn from this case by reason of his recent appointment to the position of Secretary to the Governor of the State of Louisiana;

And upon further suggesting to the Court that movers have been retained as counsel herein for the intervenor, Dr. Paul H. Saunders:

It is ordered, That the firm of Howe, Fenner, Spencer & Cocke be placed of record as counsel for Dr. Paul H. Saunders, intervenor in the above numbered and entitled case.

Granted.

(Signed) FRANK A. MONROE,
Chief Justice.

(Endorsed:) No. 20832—Supreme Court, State of Louisiana—Daniel Shaw vs. Board of Commissioners Terre Aux Boeufs Drainage District.—Motion to Place Names as Counsel of Record,—Filed & Entered Dec. 9, 1915,—(Signed) Paul E. Mortimer, Clerk.

(Order Granting Above Motion.)

(Extract from Minutes.)

At Chambers.

NEW ORLEANS, Thursday, December 9th, 1915.

122 No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS TERRE AUX BOEUFS DRAINAGE DISTRICT.

On motion of Howe, Fenner, Spencer & Cocke, and upon suggesting to the Court that Mr. Paul A. Sompayrac, counsel of record herein for Dr. Paul H. Saunders, intervenor, has withdrawn from this case by reason of his recent appointment to the position of Secretary to the Governor of the State of Louisiana; and upon further suggesting to the Court that movers have been retained as counsel herein for the intervenor, Dr. Paul H. Saunders; it is ordered that the firm of Howe, Fenner, Spencer & Cocke be placed of record as counsel for Dr. Paul H. Saunders, intervenor in the above numbered and entitled case.

(Cause Called & Continued With Preference.)

(Extract from Minutes.)

NEW ORLEANS, Monday, December 13th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20832.

DANIEL SHAW

VS.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

(On Rehearing.)

This cause came on this day to be heard, but was ordered by the Court to be continued upon the motion of Mr. P. S. Gidiere, who informed the court of the absence from the city of Mr. C. P. Fenner, one of the counsel in the cause.

123 *(Cause Continued.)*

(Extract from Minutes.)

NEW ORLEANS, Monday, January 24th, 1916.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Chief Justices.

No. 20832.

DANIEL SHAW

VS.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

This cause not having been reached was ordered by the Court to be continued until Wednesday, January 26th, 1916.

(Cause Called, Argued, & Submitted.)

(Extract from Minutes.)

NEW ORLEANS, Wednesday, January 26th, 1916.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Alfred D. Land, Walter B. Sommerville and Charles A. O'Niell, Associate Justices.

Absent: Olivier O. Provosty, Associate Justice.

No. 20832.

DANIEL SHAW
vs.
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

(On Rehearing.)

This cause came on this day to be heard:—Mr. F. L. Richardson opened for the plaintiff, appellant; Mr. C. P. Fenner replied for Dr. Paul H. Saunders, Intervenor; and Mr. R. E. Milling, amicus curiæ, closed. The court then took the cause under advisement.

124 *(Motion to Enter Counsel of Record.)*

In the Supreme Court of the State of Louisiana.

#20832.

DANIEL SHAW
v.
BOARD OF COMMISSIONERS BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

On motion of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and upon suggesting to the Court that Thomas E. Furlow has been duly employed as Attorney for the Board in the above entitled and numbered cause,

It is ordered that Thomas E. Furlow be entered on the docket as attorney of record in this cause, January 24, 1916.

(Endorsed:) No. 20,832—Supreme Court Louisiana—Daniel Shaw vs. Bayou Terre aux Boeufs Drainage District,—Motion to Enter Counsel of Record.—Filed Jan'y 28th, 1916,—(Signed) Paul E. Mortimer, Clerk.

(Motion to Dismiss Appeal.)

In the Supreme Court of the State of Louisiana.

#20832.

DANIEL SHAW
v.
BOARD OF COMMISSIONERS OF BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

To the Honorable the Supreme Court of Louisiana:

The petition of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, defendant and appellee in the above entitled and numbered cause, with respect represents:—

1. That Daniel Shaw, plaintiff and appellant in the above *and* entitled cause, had as shown by the transcript heretofore filed in this Court, only an equity consisting of his right to redeem
125 certain property theretofore adjudicated to the State of Louisiana for the non-payment of taxes assessed against said property for the year 1911; and that, as shown by said transcript, this equity was the only possible ground upon which the said Daniel Shaw was entitled to appear in Court, although the District Court did not regard such equity sufficient to justify his prosecution of the proceedings as instituted by him.

2. That on the 18th day of January, 1916, the Honorable Fred J. Grace, Register of the State Land Office, and the Honorable Paul Capdevielle, Auditor of Public Accounts, did, in the exercise of a duty enjoined upon them by Act #14 of 1892, duly transfer to the Board of Commissioners of the Lake Borgne Basin Levee District all of the lands theretofore assessed to the said Daniel Shaw and adjudicated to the State of Louisiana for the non-payment of taxes assessed against them in the name of Daniel Shaw for the year 1911, which original Act of transfer was duly recorded on January 21, 1916 in Conveyance Book 24, Folio 485 in the office of the Recorder in and for the Parish of St. Bernard, as will more fully appear by reference to a certified copy of said Act annexed hereto.

3. That, although the equity of the said Daniel Shaw consisting of his right to redeem said property continued so long as it remained in the name of the State of Louisiana, there is no right or equity granted by law, or by implication, under which the said Daniel Shaw can now redeem said lands from the Board of Commissioners of the Lake Borgne Basin Levee District.

4. That indefeasible title to said lands is vested in said Board of Commissioners of the Lake Borgne Basin Levee District, which cannot be affected by any decision of this Court relative to the validity of taxes heretofore assessed against said lands.

5. And finally, that the question of validity vel non of any taxes heretofore assessed against said lands is simply a moot ques-
126 tion in these proceedings, and should not receive further consideration at the hands of this Court.

Wherefore, petitioner prays that the appeal of the said Daniel Shaw herein be dismissed, and for all further necessary orders and decrees.

(Signed) THOS. E. FURLOW,
Counsel for Appellee.

Copy served on Plaintiff's Counsel.
(Signed) THOS. E. FURLOW, *Att'y.*

Thomas E. Furlow, being duly sworn, says, that he is special Attorney duly employed by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to appear in this case in its behalf, that he has read the above and foregoing motion to dismiss and that all the allegations of fact therein contained are true and correct.

(Signed) THOS. E. FURLOW.

Sworn to and subscribed before me this 26th day of January, 1916.

(Signed) JOHN A. KLOTZ,
[SEAL.] *Dep. Clerk Supreme Court of Louisiana.*

STATE OF LOUISIANA,
City of Baton Rouge:

We, the undersigned, Fred J. Grace, Register of the State Land Office, and Paul Capdevielle, Auditor of Public accounts, by virtue and in pursuance of the authority granted to us by Act No. 14 of 1892, and being requested so to do by the Board of Commissioners of the Lake Borgne Basin Levee District, for and in behalf of and in the name of the State of Louisiana, do, by this instrument of writing, grant, transfer, convey, deed and set over to the said Board of Commissioners all of the following described lands, adjudicated to the State for the unpaid taxes for the year 1911 on an assessment
127 in the name of Daniel Shaw, same being located in St. Bernard parish, and to have and to hold the aforesaid lands unto the said Board of Commissioners, its successors or assigns forever:

Township 12 S. R. 17 E.:	
Section 2	571.05 acres
Township 15 S. R. 17 E.:	
Section 20	457.00 "
Section 22	397.00 "
Township 16 S. R. 17 E.:	
Section 1	638.00 "
Section 2	605.00 "
Section 11, N. ½ & S. E. ¼	480.00 "
Section 12	472.00 "
Section 14	502.00 "
Total	4,122.05 acres

Given under our hands and seals of office, in the City of Baton Rouge, on this the 18th day of January, A. D. 1916.

(Signed) FRED J. GRACE,
[SEAL.] *Register State Land Office.*
(Signed) GEORGE A. SPYKER,
[SEAL.] *Chief Clerk for Auditor Public Accounts.*

I hereby certify that the above and foregoing is a true and correct copy of the original filed for record on January 21, 1916, and recorded in Conveyance Book No. 24, Folio 485, on January 21, 1916, in my office.

(Revenue Stamp.)
(Signed) W. D. ST. ALEXANDRE,
[SEAL.] *D'y Clerk & ex-Officio Recorder in and for St. Bernard Parish.*

(Endorsed:) No. 20832—Supreme Court, Louisiana—Daniel Shaw vs. Bayou Terre-aux-Boeufs Drainage District,—Motion to dismiss appeal,—Filed Jan'y 28th, 1916,—(Signed) Paul E. Mortimer, Clerk.

128 (*Motion to Strike from File.*)

Supreme Court, State of Louisiana.

No. 20832.

DANIEL SHAW

vs.

COMMISSIONER- OF THE TERRE AUX BOEUF DRAINAGE DISTRICT.

And now comes Plaintiff and Appellant, through his counsel in the above numbered and entitled cause, and excepts to the so-called Motion to dismiss filed herein by it through one of its counsel not heretofore of record, and not joined in by its other counsel, on the ground that by Art. 894 C. P.:

First. This Court is without jurisdiction to receive new evidence;

Second. Defendant's motion to dismiss was not filed within the legal delays.

Third. This Court has only appellate jurisdiction, and cannot entertain new pleadings;

Wherefore Plaintiff and Appellant moves the Court to strike from its files the motion to dismiss and evidence filed herein by defendants.

(Signed) FRANK L. RICHARDSON,
" O. S. LIVAUDAIS,
Per R.,
" FRANK SOULE,
Per R.,
Of Counsel for Appellant.

Feb'y 1, '16.

I certify that after due inquiry and after examining the directory I have not been able to find the address of the counsel filing the above motion to dismiss and for that reason have not served a copy of the above upon him.

(Signed) F. L. RICHARDSON, *Atty.*

(Endorsed:) 20832—Supreme Court—Dan'l Shaw vs. Board of Commissioners of the Terre O'Boeuf Drainage Dist.—Motion to strike from the files.—Filed Feb'y 1, 1916.—(Signed) Paul E. Mortimer, Clerk.

129 (*Final Judgment on Rehearing.*)

(Extract from Minutes.)

NEW ORLEANS, Monday, February 21st, 1916.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Oliver O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

His Honor, Mr. Justice Sommerville, pronounced the opinion and judgment of the Court in the following case.

No. 20832.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

(On Rehearing.)

It is therefore ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed; and that there now be judgment in favor of the plaintiff, and against defendants, decreeing the acreage taxes or forced contributions of twenty five cents per acre on plaintiff's property described in the petition in this case, for the years, 1911, 1912 and 1913, to be null, void, and of no effect; and that the same be cancelled; and that the preliminary injunction issued herein be perpetuated, in so far as said assessments and forced contributions are concerned. It is further ordered that the preliminary injunction be dissolved and set aside as to other taxes due on plaintiff's property. Costs to be paid by defendant and appellee.

His Honor, Mr. Justice O'Niell, dissents, being of the opinion that the case should be remanded to the trial court.

His Honor, the Chief Justice, is of the same opinion.

130 (*Opinion of the Court—on Rehearing.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, Monday, Feb'y 21, 1916.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice; Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Charles A. O'Niell, Associate Justices.

His Honor, Mr. Justice Sommerville, pronounced the Opinion and Judgment of the Court in the following case.

131 Mr. Justice Sommerville.

Monday, February 21st, 1916.

No. 20832.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

On Rehearing.

The pleadings have been fully stated in the original opinion of the court.

The plaintiff, alleging himself to be the owner of certain described lands in St. Bernard parish, and embraced within the Bayou Terre-aux-Boeufs Drainage District, alleges that said land was assessed for taxation during the years 1911, 1912 and 1913; that he tendered to the tax collector the proper amount of taxes due thereon, and that it was refused; for the reason that he, the plaintiff, declined to pay the drainage taxes, or forced contributions, of 3¢, 6¢ and 16¢, amounting to 25¢, imposed upon each acre of the lands in question, for the years mentioned. A preliminary injunction was issued, restraining the tax collector and others from proceeding with the seizure and sale of plaintiff's property; he asks that said injunction be perpetuated, and that "there be judgment in favor of your petitioner and against defendant, declaring the assessments of said property for drainage taxes, (or forced contributions,) above referred to to be null, void and of no effect, and ordering the cancellation of the same."

In his petition, plaintiff does not directly attack the formation of the Bayou Terre-aux-Boeufs Drainage District; or the organization of the board of commissioners for that district; or the system of drainage adopted by the board; or the amount of the forced
132 contributions imposed by the board, except as to his property; or the election by which drainage bonds were issued by the board; or the issue of the bonds.

The defendant sets up the regularity and legality of all the preceding matters; but, as they have not been called in question, they do not form issues in the case.

Defendant admitted that plaintiff was the owner of the property in question; but it now moves to dismiss the appeal by the plaintiff on the ground that he, plaintiff, has ceased to be the owner of the land, because of a sale thereof made to the state for delinquent taxes for the year 1911, and the subsequent transfer of the title to said lands by the state to the Board of Commissioners of the Lake Borne Levee District; said transfer having been made by the state to the Board of Commissioners since the appeal was filed in this court.

The motion comes too late to be considered. Besides, defendant had admitted that plaintiff was the owner of the lands; and this proceeding is to enjoin the tax collector from selling the land for taxes for the year 1911, as well as the two succeeding years. The motion is denied.

Respondent, further answering, denied that the lands of plaintiff were outside of any levee system which the board was building, or proposed to build, for the purpose of draining the lands within the district; and it specifically denied that the lands would receive no benefit from the system of drainage provided for them; but averred that the lands are within the limits of the drainage district, and subject to all drainage taxes voted by the property tax payers therein. Defendants further denied that drainage taxes had been imposed upon plaintiff's lands for the purpose of reclaiming them by artificial means, as by leveeing and pumping, as set forth in paragraph 3 of article 281 of the constitution of 1898, as amended by Joint Resolution, No. 132, of 1912, p. 164. Defendant further represented that it has "actively progressed with the work of drainage with the opening of natural outlets in said district, and the principal
133 work that has been done in the drainage district has been the opening of the natural outlets in the said drainage district, notably the clearing out and dredging of Bayou Terre-aux-Boeufs, Bayou La Coutre and the digging of additional canals to make, as far as it lies within the power of the board, a continuous and comprehensive system of drainage that would be resultant in the greatest good to the greatest number of property holders in the district." Defendant alleged that the drainage district "is composed partly of lands that are high and subject to drainage by gravitation without the necessity of leveeing and pumping, and largely of lands that are low and marshy and that are unfit for cultivation, unless subjected to reclamation by leveeing and pumping; but that the great bulk, almost the entire acreage of low marshy land, owes a servitude of drainage to the higher lands which are to be drained by gravitation; that in order, therefore, to create the comprehensive system of drainage necessary to take care of all the waters of the drainage district, it was essential and necessary to deepen, open and clear the natural outlets and bayous that form the natural drains of the entire district, and to make such connections of canals with such natural outlets as would at least place natural drainage in reach of the large bulk of the property in the drainage district, to place it in such reach at least, as would give every reclamation unit formed in that district an outfall in the drainage system of the district." That the board "do not propose and do not contemplate, with the taxes herein above referred to, to reclaim by leveeing and pumping any portion of the lands included within the limits of the bayou Terre-aux-Boeufs Drainage District, but simply propose a comprehensive scheme of general drainage that will give outlet for all the waters in Bayou Terre-aux-Boeufs Drainage District. That subsequent to all these proceedings there have been created in said Bayou Terre-aux-Boeufs Drainage District three sub-drainage districts, which sub-drainage districts are

134 making use of the general work for general drainage inaugurated by your respondents herein, and which sub-drainage districts have by petition of two thirds of the number of acres in the sub-drainage districts affected, asked for bond issues to accomplish the reclamation of leveeing and pumping of the particular acreage within the limits of said sub-drainage districts, but that petitioner's property is in no wise included in any of the sub-drainage districts formed, and is in no wise affected by the taxes levied for the benefit of such particular sub-drainage districts, and, therefore, is not concerned or interested in the development of said drainage districts or in the levy of taxes inaugurated therein.

"Your respondent avers, however, that petitioner herein had received an enormous benefit and is receiving an enormous benefit from the general drainage taxes levied in the Bayou Terre-aux-Boeufs Drainage District, for the reason that there has been an enormous enhancement in the valuation of properties in the said district since the work of general drainage has been begun, and since the active dredging of the natural outlets of said drainage district have been inaugurated.

"Respondent further avers that petitioner's lands have and will enhance in value as a result of the work accomplished and to be done and will be more valuable if he does with his lands what other owners are doing with theirs, i. e., to have them incorporated in a sub-drainage district and to have them leveed and pumped by artificial means to accomplish their complete reclamation". * * *

Defendant alleges that the proceeds from the sale of the bonds have "been paid out for actual work done and labor performed in the construction of canals and in the opening of the natural outlets as shown in this answer, located within the limits of the said Bayou Terre-aux-Boeufs Drainage District, all of which was necessary and is necessary to accomplish a comprehensive system of drainage
135 in said district, and to allow the successive formation of various sub-drainage districts, or reclamation units, in the territory over which your respondent has jurisdiction."

The answer and the testimony in the record show that the lands of plaintiff are low and marshy, and covered in part by the waters of the Gulf of Mexico; and that they have not been benefitted by the drainage work done by the defendant board; and, according to the answer, it is not contemplated that they will be drained of the water which appears to be standing on and over them; and that the only means for draining these lands would be for the plaintiff to put them in a sub-drainage district, and levee and pump them; and to pay an additional tax imposed for that purpose, or method of drainage.

It is clear that plaintiff's lands have not been drained, are not to be drained, and cannot be drained under the present system of the defendant board; and that the lands belonging to other persons in the district are being drained by natural outlets, or by gravitation, the costs of which are paid and to be paid, in part, out of the forced contributions imposed upon plaintiff's lands, the collection of which is enjoined in this suit.

The only benefit alleged to have been derived by plaintiff from the

drainage system adopted by defendant in the district in which his lands are located, is that they have been enhanced in value with the other property in the district; and that they will be more valuable if he causes them to be incorporated in a sub-drainage district, and will tax himself for the cost of having them leveed and pumped by artificial means "to accomplish their complete reclamation." But such benefit is not a benefit to the lands; unless and until plaintiff taxes himself for the cost of leveeing and pumping them. This latter cost is not to be paid from the forced contributions sought to be collected at this time from this plaintiff; and the lands are not being benefitted in any manner whatever by the drainage of
136 other portions of the district. Plaintiff cannot be compelled to pay for the draining of other lands in the district in which his property has been illegally and arbitrarily included and when they are not being benefitted directly or indirectly by drainage. If that were done, it would be the taking of plaintiff's property without due process of law.

Plaintiff's lands are largely covered by water now. They are to receive more water upon them if that is possible, through the system of drainage adopted by defendant; that is through natural canals and outlets, which have been cleared and enlarged, and which convey the water from other lands in the district on to plaintiff's lands. Defendants say- that the low marshy lands of plaintiff and others "owe a servitude of drainage to the higher lands which are to be drained by gravitation." This may be true; but such a servitude does not drain plaintiff's lands; and plaintiff cannot be compelled to pay for the exercise of that servitude on his lands by others. The lands which are drained must pay the cost of draining them. No act of the board could be more arbitrary, if drainage alone be regarded, than that of imposing a tax upon the lands of plaintiff under such circumstances.

It is clear that plaintiff's property was included in the drainage district not in the exercise of "legal legislative discretion," not because the system of drainage would enure to the benefit of the property, even indirectly; but with the purpose of deriving revenues so as to grant a special benefit to other lands subject to be improved by drainage, without any benefit to plaintiff or his property whatever, present or prospective.

The exaction of the taxes claimed by defendant from plaintiff is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of the latter's property, and it cannot be maintained.

In disposing of the case of Myles Salt Co. vs. Board of
137 Commissioners of Iberia & St. Mary Drainage District, et al. which case is similar in principle to the one under consideration, the Supreme Court of the United States say: "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefitted directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. Wagner vs. Leser, supra. We are not dealing with motives alone but as well

with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

There is no doubt that the legislature of a state may constitute drainage districts and define their boundaries, or delegate such authority to local or legislative bodies, as, in the present case, to the police juries of the parishes of the state, and that their action cannot be assailed under the 14th amendment, unless it is palpably arbitrary and a plain abuse. Plaintiff has not invoked the property clause of the constitution of the United States in a direct way; but he has set up that his lands will not receive any benefit from the system of drainage being carried out by the defendant; and that under the law, no acreage tax can be imposed upon his lands therefor as they will not be specially benefitted by drainage; and that the seizure and sale of his property for the drainage taxes, or forced contributions, claimed by the defendant, would cause him irreparable injury; and he asks that they be cancelled, and the collection of them enjoined.

"The courts are very generally agreed that the authority
138 to require the property specially benefitted to bear the expense of local improvements is a branch of the taxing power, or included within it. * * * Whether the expense of making such improvements shall be paid out of the general treasury, or be assessed upon the abutting or other property specially benefitted; and, in the latter mode, whether the assessment shall be upon all property found to be benefitted, or alone upon the abutters, according to frontage or according to the area of their lots, is according to the present weight of authority considered to be a question of legislative expediency." Dillon, Mun. Corp. Vol. 2, Sect. 752, 4th Ed.

In the case of Norwood vs. Baker, 172 U. S. 269, where the property of an individual was taken for the purpose of making a street through his property and the entire cost of opening the street, including not only the full amount paid for the strip condemned, but the costs and expenses for the condemnation proceedings were thrown upon the abutting property of the person whose lands were condemned, there appeared to the court to be an abuse of the law, and not a valid exercise of the taxing power; and an injunction was sustained preventing the authorities from collecting that particular assessment; but, it did not go so far as to prevent another special assessment of Mrs. Baker's property for her share in the costs of the contemplated improvement.

In the case of Houck vs. Little River Drainage District, from the state of Missouri, the Supreme Court of the United States only recently held that the drainage tax therein imposed was legal. The right of the legislature, unless restricted by the state constitution, to create drainage districts directly, or to provide for their institution, and to authorize them to carry on systems of drainage, at the expense of those whose lands are to be drained, was therein recog-

nized; and it was said that the action of the legislature, or the body having the authority of the legislature, could not be assailed
139 under the fourteenth amendment; unless it is palpably arbitrary and a plain abuse.

And in the case of Wagner vs. Leser, also recently decided, the same court repeat: "This court has frequently affirmed that the general taxing systems of the state are not to be presumed lacking in due process of law because of inequalities or objections, as long as arbitrary action is avoided. * * *

"We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of a court of equity to protect the constitutional rights of land owners, because of arbitrary and wholly unwarranted legislative action. The constitutional protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such action, whether under the guise of legislative authority or otherwise."

These principles are recognized and stated in the cases of Dubose vs. Levee Com. 11 La. Ann. 167, and Cross vs. Police Jury, 7 Robb. 121.

And in the recent case of Myles Salt Co. vs. Board of Commissioners, before referred to, the Supreme Court of the United States refer to the two cases recently decided by that court in the following language:

"The case, therefore, is within the limitation of the power of the state as laid down in Houck vs. Little River Drainage District, et al., supra, which cites Norwood vs. Baker, 172 U. S. 269, and retains its principles. It has not the features which determined French vs. Barber Asphalt Co., 181 U. S. 324, and the cases which have followed that case, and Wagner vs. Leser, decided coincidently with Houck vs. Drainage District, and cited in the latter."

And the court held that the inclusion, in a drainage district, of Weeks Island, the property of the plaintiff in that suit, be-
140 ing an island rising one hundred and seventy five feet or more out of the marshes and bayous surrounding it, and which could not be drained by the system of drainage inaugurated in that district, and which island needed no drainage whatever, was a usurpation by the defendant board, and an effort to take plaintiff's property without due process of law.

It is therefore ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed; and that there now be judgment in favor of the plaintiff, and against defendants, decreeing the acreage taxes or forced contributions of twenty five cents per acre on plaintiff's property described in the petition in this case, for the years 1911, 1912 and 1913, to be null, void, and of no effect; and that the same be cancelled; and that the preliminary injunction issued herein be perpetuated, insofar as said assessments and forced contributions are concerned. It is further ordered that the preliminary injunction be dissolved and set aside as to other taxes due on plaintiff's property. Costs to be paid by defendant and appellee.

O'Niell, J., dissents, being of the opinion the case should be remanded to the trial court.

Monroe, C. J., is of the same opinion.

Syllabus.

(1) "The courts are very generally agreed that the authority to require the property specially benefitted to bear the expense of local improvements is a branch of the taxing power, or included within it. * * * Whether the expense of making such improvement shall be paid out of the general treasury, or be assessed upon the abutting or other property specially benefitted, and, if in the latter mode, whether the assessment shall be upon all property found to be benefitted,
141 or alone upon the abutters, according to frontage or according to the area of their lots, is, according to the present weight of authority, considered to be a question of legislative expediency."

(2) A drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefitted directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation.

(3) And an injunction will issue to prevent the collection of taxes upon property thus illegally included in a drainage district.

(Note by the Clerk of the Supreme Court.)

After the rendition of the foregoing opinion, (on the rehearing granted) of date February 21st, 1916, there were filed in my office two applications for rehearing, one by Dr. P. H. Saunders, Intervenor, and one by R. E. Milling, as Amicus Curiæ, The Court declined to consider the applications, adhering to Section 4 of Rule XIV of the new rules of Court, which provide:—"Only one rehearing shall be granted, unless some question has been decided, on the rehearing granted, which had not, before, been considered, and the Court has reserved the right to make another application."

142 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing 141 pages contain a full, true and complete copy of the proceedings had in the 29th Judicial District Court for the Parish of St. Bernard, in a certain suit wherein Daniel Shaw was plaintiff, and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, was defendant, and Dr. Paul Hill Saunders, was intervenor; and, also, of all the

proceedings had in this Supreme Court on the appeal taken by said plaintiff, which appeal is now on the files of this court under the No. 20,832.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at the city of New Orleans, this the 22d day of April, Anno Domini, One thousand, nine hundred and sixteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

143 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 22d day of April, Anno Domini, One thousand, nine hundred and sixteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

144 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof, I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this 22d day of April, Anno Domini, one thousand, nine hundred and sixteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

145 *(Original Petition for Writ of Error.)*

Supreme Court of the State of Louisiana.

No. 20832.

DANIEL SHAW, Plaintiff and Appellant,

versus

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT et al., Defendant and Appellee; Paul H. Saunders, Intervenor and Appellee.

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Paul H. Saunders, Intervenor and Appellee herein, respectfully represents:

That in this cause, there is a right, privilege or immunity claimed under the Constitution of the United States, and the decision of this court is against the title, right, privilege or immunity especially set up or claimed by the Intervenor and Appellee under such Constitution.

That the Supreme Court of Louisiana is the highest court in Louisiana; that petitioner has exhausted all of his remedies, and that the judgment rendered herein by the Supreme Court of the State of Louisiana is now final.

Wherefore, petitioner prays that this court may be pleased to grant him a writ of error, without supersedeas, to the Supreme Court of the United States, on his executing a bond in such sum as the court may fix, returnable to said court at Washington, D. C., according to law.

WM. WINANS WALL, *Attorney.*

146 *(Order Granting Writ of Error.)*

Order.

Let a writ of error issue herein as prayed for, returnable according to law, upon plaintiff in error furnishing bond, conditioned according to law, in the sum of not less than one thousand ($1,000) Dollars.

Done and Signed officially in chambers this 6th day of April, 1916, at New Orleans, La.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice.

147 (*Original Assignment of Errors.*)

Supreme Court of the State of Louisiana.

20832.

DANIEL SHAW, Plaintiff and Appellant,

versus

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT et al., Defendant and Appellee; Paul H. Saunders, Intervenor and Appellee.

Assignment of Errors.

Now into court comes Paul H. Saunders, Intervenor and Plaintiff in Error, by Wm. Winans Wall, his attorney, and says:

That in the record, proceedings and decree in the above entitled and numbered matter, there is manifest error in this, to-wit:

First. The final decree of this court is based upon the finding, as a fact, by the Supreme Court of Louisiana that the property upon which the tax which has been enjoined was levied was not benefited and could not be benefited by the scheme of drainage provided by the Bayou Terre-aux-Boeufs Drainage District.

It appears from the record that when the plaintiff in the suit attempted in the trial court to introduce evidence to show that the property, upon which the taxes enjoined had been levied, had not been benefited and could not be benefited by the proposed scheme of drainage, the Intervenor and Plaintiff in Error objected to the admission of this evidence, upon the ground that the question was a legislative and not a judicial one, and the legislative department having found that the benefits would accrue, that finding, in the absence of a charge of fraud, was conclusive upon the court. This objection was sustained. All evidence as to benefits vel non was excluded.

As the Intervenor and Plaintiff in Error had controverted in their pleadings the allegation of plaintiff's petition to the effect that no benefits had been derived or could be derived by the property, the objection to the admission of evidence on that point

148 was in the nature of an exception of no cause of action and admitted the truth of the allegation that no benefits had been derived, solely for the purposes of the objection, and did not concede as a fact for any other purpose that no benefits had been derived or would be derived from the system of drainage that had been inaugurated by the Bayou Terre-aux-Boeufs Drainage District.

Under the law and jurisprudence as it is now and has existed for over a century, the rule of practice is, as applied to this case, when the Supreme Court of Louisiana found that the case must turn upon the question of benefit vel non from the drainage system, the court was bound to remand the case in order that evidence

might be neard on the question of benefit vel non, and the court had no right to conclude that the allegation of the petition to the effect that no benefits had accrued established itself to such an extent that the court could predicate a final judgment upon this controverted allegation of the petition without any proof in the record to sustain it.

Gughlielhmi v. Geismar, 46 Ann., 283; State ex rel. Negrotto v. Judges, 45 Ann., 1437; State v. Booth, 28 Ann., 726; Fletcher v. Dauber, 21 Ann., 151; Johnson v. Hickley, 4 La., 285; Wood vs. Henderson, 2 Ann., 220; Cross on Pleadings, page 162.

Non constat that upon trial it would not have been shown, beyond the peradventure of a doubt, that the property, upon which the taxes enjoined had been levied, had been improved a hundredfold by the system of drainage. Any way, the right to a trial upon this issue is sacremental, and as the Supreme Court of Louisiana by the final judgment rendered by it has denied the Intervenor and Plaintiff in Error the right to be heard, has deprived him of his day in court upon the issue made the basis of said decision, and as the right to have the case tried in accordance with the law of the land is sacremental, the final judgment of the Supreme Court of Louisiana is erroneous and deprives Intervenor and Plaintiff in Error of his property without due process of law, in viola-

149 tion of the 14th Amendment to the Federal Constitution.

That Intervenor and Plaintiff in Error could not anticipate that any such final judgment or decree would be rendered by the Supreme Court of Louisiana, which is the highest court in that State, and that he would be deprived of his property without due process of law, and the Supreme Court of Louisiana has denied Intervenor and Plaintiff in Error the right to apply for a rehearing in this cause since the rendition of said final judgment or decree herein.

Second. That the final judgment rendered herein on rehearing consists entirely of an interpretation of the 14th Amendment to the Constitution of the United States.

That the Supreme Court of the State of Louisiana has held in this case, where the Bayou Terre-aux-Boeufs Drainage District was created by the Police Jury of the Parish of St. Bernard, in the State of Louisiana, in pursuance of the Laws and Constitution of the State of Louisiana, and the property upon which the tax in contest has been levied included therein, and the Bayou Terre-aux-Boeufs Drainage District thus created has inaugurated a system of drainage for the purpose of draining the lands of that district and levied taxes and issued bonds in pursuance of the powers conferred upon it by the Constitution and laws of the State of Louisiana, where the plaintiff, the owner of the land in contest has brought a suit, in which there is no allegation of fraud upon the part of the political or legislative department of the State, to have declared null the tax levied for the payment of such bonds upon the sole allegation that his property has not been benefited, and where it was claimed by the Intervenor and Plaintiff in Error that, under such circumstances, the judicial department of the State could not

correct an honest finding of the political or legislative department by reason of the 14th Amendment to the Constitution of the United States, that the levying and collection of such tax deprived the Defendant in Error (the original plaintiff) of his property
150 without due process of law. This opinion and decree of the Supreme Court of Louisiana is contrary to and contradictory of the well established jurisprudence of the Supreme Court of the United States, and should be made to conform thereto by reversing said judgment or decree.

Third. By Article 281 of the Constitution of Louisiana, the bond issue, of which Intervenor and Plaintiff in Error is the owner, and the tax to pay said bonds and the interest thereon have been declared incontestable. Such being the case, the Supreme Court of Louisiana, a creature of that Constitution, is without jurisdiction ratione materiæ to render judgment annulling the tax enjoined and thereby destroy the bonds held by Intervenor and Plaintiff in Error, and, therefore, Intervenor and Plaintiff in Error has been deprived of his property without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

Wherefore, the said Paul H. Saunders, Intervenor and Plaintiff in Error, prays that the final judgment or decree of the said Supreme Court of Louisiana rendered in this cause be annulled and avoided and reversed, with costs.

And for costs and general relief.

WM. WINANS WALL,
Attorney for Intervenor and Plaintiff in Error.

[Endorsed:] No. 20832. Supreme Court of the State of Louisiana. Daniel Shaw, Plaintiff and Appellant, versus Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, et al., Defendant and Appellee, Paul H. Saunders, Intervenor and Appellee. Petition of Paul H. Saunders, Intervenor and Appellee, for Writ of Error to the Supreme Court of the United States, and Assignment of Errors. Wm. Winans Wall, Attorney. Filed Ap'l 5, 1916. Paul E. Mortimer, Clerk.

151 (*Copy of Bond for Writ of Error.*)

Supreme Court of the State of Louisiana.

No. 20832.

DANIEL SHAW, Plaintiff and Appellant,
versus
BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT et al., Defendant and Appellee; Paul H. Saunders, Intervenor and Appellee.

Bond for Writ of Error.

Know all men by these presents, that we, Paul H. Saunders, as principal, and Lynn H. Dinkins, as surety, are held and firmly

bound unto Daniel Shaw and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, in the full and just sum of One Thousand Dollars ($1000.00), to be paid to said Daniel Shaw and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, their attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of April, in the year of our Lord, one thousand, nine hundred and sixteen.

Whereas, lately, at a hearing and decision in the Supreme Court of Louisiana, in a suit depending in said court between Daniel Shaw, as Plaintiff and Appellant, and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, Defendant and Appellee, and Paul H. Saunders, Intervenor, also Appellee, a judgment was rendered against said Paul H. Saunders and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and the said Paul H. Saunders having obtained a writ of error and filed a copy thereof in the
152 clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to said Daniel Shaw and the Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District, citing and admonishing them to be and appear before the United States Supreme Court to be holden at Washington within thirty days from the date thereof;

Now, the condition of the above obligation is such that if the said Paul H. Saunders shall prosecute his appeal or writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) LYNN H. DINKINS.
(Signed) PAUL H. SAUNDERS.

Acknowledgment.

Personally came and appeared before me, Charles Schneidau, a Notary Public duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, Lynn H. Dinkins and Paul H. Saunders, both residents of the City of New Orleans, to me personally known, who declared in my presence and in the presence of P. M. Lamberton and Harold P. Nathan, the undersigned competent witness-, that they and each of them signed and executed the foregoing bond freely and voluntarily, and that the same is their free act and deed.

In testimony whereof, I have hereunto set my hand and seal of office at New Orleans, La., this 7th day of April, 1916.

(Signed) LYNN H. DINKINS.
(Signed) PAUL H. SAUNDERS.

Witnesses:.

(Signed) P. M. LAMBERTON.
(Signed) HAROLD P. NATHAN.

(Signed) CHARLES SCHNEIDAU,
[SEAL.] *Not. Pub.*

153 Approved:
(Signed) FRANK A. MONROE,
[SEAL.] *Chief Justice of the Supreme Court of Louisiana.*

Affidavit.

Before me, the undersigned authority, personally came and appeared, Lynn H. Dinkins, to me personally known, who being first by me duly sworn, deposes and says: that he is the surety on the within bond; that he resides in the City of New Orleans, La., and is worth the full sum of One Thousand Dollars ($1,000.00) over and above all his debts and liabilities and property exempt from execution.

(Signed) LYNN H. DINKINS.

Subscribed and sworn to before me this 7th day of April, 1916.
(Signed) CHARLES SCHNEIDAU,
[SEAL.] *Notary Public.*

(Endorsed:) No. 20,832—Supreme Court of the State of Louisiana—Daniel Shaw, Plaintiff and Appellant, versus Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, Defendant and Appellee,—Paul H. Saunders, Intervenor and Appellee, —Bond for writ of error,—Filed April 7th, 1916,—(Signed) Percy J. Heines, Deputy Clerk.

154 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Daniel Shaw versus Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, Dr. Paul Hill Saunders, Intervenor, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or
155 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Paul Hill Saunders, Intervenor, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 7th day of April, in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. District Court for the Eastern Dist. of La., N.O.Div.]

H. J. CARTER,
Clerk of the District Court of the United States
for the Eastern District of Louisiana.

Allowed by

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

[Endorsed:] No. 20832. Paul H. Saunders, Intervenor, Plaintiff-in-error, versus Daniel Shaw and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District et al., Defendants-in-error. Writ of Error. Filed April 7th, 1916. Paul E. Mortimer, Clerk.

156 (*Certificate of Lodgment.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me, as such clerk, on April 5th, 1916, in the cause entitled: Paul H. Saunders, Intervenor, Plaintiff-in-error, vs. Daniel Shaw and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, et al., Defendants-in-error:

1st. The original petition for writ of error as herein set forth.

2nd. The original assignment of errors as herein set forth.

I further certify that there was lodged with me, as such clerk, in the above named cause, on April 7th, 1916:

1st. The original bond for writ of error, a copy of which is herein set forth.

2nd. The original writ of error as herein set forth.

3rd. Three copies of the writ of error; one copy to be served on

each of the defendants in error, and one copy to be lodged in my office.

In witness whereof, I hereunto set my hand and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day of April, A. D. 1916.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed citation together with a petition in said cause on the therein-named Daniel Shaw by handing to and leaving a true and correct copy thereof with him personally at Thief River Falls in said District on the 17th day of April, A. D. 1916.

JOSEPH A. WESSEL,
U. S. Marshal,
By A. H. JESTER, *Deputy.*

157 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Daniel Shaw, Esq., Thief River Falls, Minn., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Paul H. Saunders, Intervenor is plaintiff-in-error and Daniel Shaw and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage Distirct et al. are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Paul H. Saunders, Intervenor, Plaintiff-in-error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White Chief Justice of the Supreme Court of the United States, this 7th day of April in the year of our Lord one thousand nine hundred and sixteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 20832. Paul H. Saunders, Intervenor, Plaintiff-in-error, vs. Daniel Shaw and Board of Commissioners of the Bayou-Terre-aux-Boeufs Drainage District et al. Defendants-in-error. Citation. For Return. Sheriff's. Filed Ap'l 24, 1916. Paul E. Mortimer, Clerk.

158 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Daniel Shaw, Esq., Thief River Falls, Minn., through Frank L. Richardson, Esq., Attorney of Record, at Interstate Building, Canal & Camp streets, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein Paul H. Saunders, Intervenor is plaintiff-in-error and Daniel Shaw and Board of Commissioners of the Bayou Terre aux-Boeufs Drainage District et al. are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Paul H. Saunders, Intervenor, plaintiff-in-error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 7th day of April in the year of our Lord one thousand nine hundred and sixteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court
of the State of Louisiana.

Received by U. S. Marshal, New Orleans, La., April 12/16.
And on April 14th 1916 I served a copy Writ of Error and Citation on Daniel Shaw Esq. by handing same to Frank L. Richardson Attorney of Record in person in the City of New Orleans La.

FRANK M. MILLER,
U. S. Marshal.
By E. J. FLEMING, *Deputy.*

[Endorsed:] Supreme Court of the State of Louisiana. No. 20832. Paul H. Saunders, Intervenor, Plaintiff-in-error, vs. Daniel Shaw and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District et al. Defendants-in-error. Citation. Sheriff's Return. Filed Ap'l 24, 1916. Paul E. Mortimer, Clerk.

159 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, through its President Adam Estopinal, Esq., St. Bernard, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Paul H. Saunders, Intervenor is plaintiff-in-error and Daniel Shaw and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District et al. are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Paul H. Saunders, Intervenor, Plaintiff-in-error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White Chief Justice of the Supreme Court of United States, this 7th day of April in the year of our Lord one thousand nine hundred and sixteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court
of the State of Louisiana.

Received by U. S. Marshal, New Orleans, La., April 8/16.

And on the same day month and year I served a Copy Writ of Error and Citation on the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District et al. by handing same to Adam Estopinal its President in person in the City of New Orleans La.

FRANK M. MILLER,
U. S. Marshal,
By E. J. FLEMING, *Deputy.*

[Endorsed:] Supreme Court of the State of Louisiana. No. 20832. Paul H. Saunders, Intervenor, Plaintiff-in-error, vs. Daniel Shaw and Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District et al. Defendants-in-error. Citation. For Return. Sheriff's. Filed Ap'l 14, 1916. Paul E. Mortimer, Clerk.

160 *(Return to Writ.)*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto set my hand and affix the seal of the court aforesaid, at the city of New Orleans, this the 22d day of April, A. D. 1916.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 25,276. Louisiana Supreme Court. Term No. 472. Paul Hill Saunders, plaintiff in error, vs. Daniel Shaw and The Board of Drainage Commissioners of the Bayou Terre-aux-Boeufs Drainage District. Filed April 29th, 1916. File No. 25,276.

Supreme Court of the United States

October Term, 1910.

No. 472.

PAUL HILL SAUNDERS,

Plaintiff in Error,

versus

DANIEL SHAW AND THE BOARD OF DRAINAGE COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Plaintiff in Error.

WM. WINANS WALL,

Attorney for Plaintiff in Error.

E. P. Anders Ptg. Co., Brief Printers, 515 Natchez St., N. O.

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Supreme Court of the United States

October Term, 1916.

No. 472.

PAUL HILL SAUNDERS,
Plaintiff in Error,

versus

DANIEL SHAW AND THE BOARD OF DRAINAGE COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT,
Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Plaintiff in Error.

SYLLABUS.

When on the trial of a suit to enjoin and annul a tax levied to pay bonds issued by a drainage district to

obtain funds with which to construct a drainage system, the sole attack upon the tax being that the property has not been benefited, the trial judge excludes all testimony going to show lack of benefit and dismisses the case, and, on appeal, the supreme court of the state reverses the judgment of the lower court and decides, as a matter of fact, without any evidence in the record to show such fact, that the property has not been benefited by the scheme of drainage installed by the governing authority of the drainage district, the judgment of the supreme court deprives the **bona fide** bondholders of their property, without due process of law.

In such a case the objection to the reception of evidence to prove lack of benefits, because the petition contained no allegation of fraudulent or arbitrary abuse of discretion on the part of the legislative department of the state in creating the taxing district, is in the nature of an exception of no cause of action, and, when such objection has been sustained by the trial court and all evidence as to benefits excluded from the case, the state supreme court has no jurisdiction to reverse the judgment and decide the case in favor of the plaintiff on appeal. The supreme court only has jurisdiction on appeal to review the matters passed upon by the lower court. Upon finding that the ruling, excluding all evidence as to the question of benefits, was incorrect, it is the duty of the supreme court of the state to remand the case to the lower court, in order that the question of fact may first be passed upon by that court.

"It is the province of the appellate court to review proceedings of the inferior court, and to determine whether its rulings and decrees therein embraced are right or wrong, and not to deal with matters and

issues distinctly presented by the pleadings, but not considered or decided by that court. **19 La., 207; 9 R., 256; 7 Ann., 622; 10 Ann., 522; 11 Ann., 746; 15 Ann., 159.''**

Conery v. Waterworks, 39 Ann., 770.

When an exception of no cause of action is overruled, the defendant is entitled to file an answer and offer evidence in his behalf, and while the plea admits, for the purposes of the trial and decision of the exception, that the allegations of the plaintiff's petition are true, yet when the same is overruled by the trial court, the appellate court does not become seized of jurisdiction of the merits until after evidence has been properly introduced in the trial court and considered by that court. Consequently, if, on appeal, a judgment sustaining a plea of no cause of action is annulled and reversed, the appellate court cannot deprive the defendant of his right to answer and introduce evidence, nor can it acquire original jurisdiction of the merits.

State ex rel Negrotto v. Judges, 45 Ann., 1443; Wood v. Henderson, 2 La. Ann., 220; Eulalie v. Long, 9 La. Ann., 11; DeLacroix v. Gauns, 13 La. Ann., 177; Lea v. Terry, 20 Ann., 428; Smith v. Donnelly, 27 La. Ann., 97.

Where there is not even color of proof to sustain a finding of facts by the supreme court of the state, and there is ground for the insistence that such a finding of facts has resulted in the denial of the constitutional right of the litigant to a trial of his case, in accordance with the law of the land, this court will review the facts so found, in order that the litigant may not be deprived of his property without due process of law.

Interstate Amusement Co. v. Albert, 239 U. S., 567; Southern Pacific Co. v. Schuyler, 226 U.

S., 601, 611; N. C. R. R. v. Zachary, 232 U. S., 248, 259; Carlson v. Washington, 234 U. S., 103, 106; Creswell v. Knights of Pythias, 225 U. S., 246, 261.

" 'Due process of law' in each particular case means such an exertion of the powers of government as the settled maxims of the law permit and sanction, and such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs. It has also been defined as: A law which hears before it condemns; which considers upon inquiry, and renders judgment only after trial. Law in its regular course of administration through courts of justice. A prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property. An orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to define, enforce and protect his rights."

Cyc., Vol. 81, p. 1080.

Since the amendment to sec. 237 of the judicial code, by Act of March 3rd, 1914, approved December 28th, 1914, this court is vested with jurisdiction to review all cases decided by state courts involving an interpretation of the constitution of the United States, whether the decision of he state court is in favor of or against the right, privilege or immunity claimed under the constitution, treaty, statute, commission or authority of the United States.

Where the legislative branch of the state government, in the legitimate exercise of its discretion, has created a drainage district, and under the authority of the constitution and laws of the state, the governing authority of the district and the property tax-

payers thereof have caused to be levied and assessed a special acreage tax against all property in the district to pay the cost of constructing a drainage system designed for the whole district, the fact that certain property in the district has not been benefited, or, in the opinion of the owner thereof, can derive no benefit from such a system, there is presented no question under the fourteenth amendment to the federal constitution, upon which the supreme court of the state or this court could annul the tax so levied.

Spencer v. Merchant, 125 U. S., 345, 355; Davidson v. N. O., 96 U. S., 97; French v. Barber Asphalt Paving Co., 181 U. S., 324, 344; Wight v. Davidson, 181 U. S., 371, 384; Tonawanda v. Lyon, 181 U. S., 391; Webster v. Fargo, 181 U. S., 394, 395; Hibben v. Smith, 191 U. S., 325, 326; L. & N. R. R. v. Barber Asphalt Paving Co., 197 U. S., 430, 433; Wagner v. Baltimore, 239 U. S., 207, 219; Houck v. Little River Drainage Dist., 239 U. S., 478; Myles Salt Co. v. Iberia & St. Mary Drainage Dist., 239 U. S., 478; George, et al., v. Sheriff and Tax Collector, 45 La. Ann., 1233; Degravelle v. Iberia & St. Mary Drainage Dist., 104 La., 707; Bernard v. Bayou Portage Drainage Dist., 130 La., 637; Myles Salt Co. v. Iberia & St. Mary Drainage Dist., 134 La., 903.

Where a property owner knows that his property is to be taxed to pay bonds issued to pay for a public improvement, makes no objection thereto, and pays the taxes while the bonds are being sold, he is estopped from questioning the validity of the tax to the prejudice of a **bona fide** holder of the bonds.

Tulare Irrigation District v. Shepard, 185 U S., 25, 26.

"It is now well settled that where bonds of a county or municipality have been issued under authority of law, and where, at the same time, the law has directed a tax to be levied for their protection—or where there is a general law authorizing and directing a tax in all like cases, applicable to said bonds, the law becomes a part of the contract. The holder is entitled to look to the taxing provision as a part of his security, and has a vested right to demand at the proper time, that it shall be exercised in his favor."

State v. Pillsbury, 105 U. S., 278; Broudue, et al., v. McCabe, Collector, 33 Ark., 690.

As the tax attacked in this case is a part of the bond contract, the attack on the tax is an attack on the bonds, and, therefore, the courts of Louisiana were without jurisdiction to entertain this suit, because the amendment to art. 281 of the constitution of the state of Louisiana in accordance with Act 192 of the Session of the General Assembly of Louisiana for the year 1914, validated all bonds theretofore issued under said art. 281 of the constitution, where more than sixty days had elapsed since the promulgation of the proceedings evidencing the issuance of such bonds, and withdrew from all of the courts of the state jurisdiction to entertain any contest, wherein their validity or constitutionality was questioned.

A judgment rendered against a party by a court not vested with jurisdiction of the subject would deprive him of his property, without due process of law.

May It Please Your Honors:

Throughout this brief, for the sake of convenience and brevity, the parties are designated as follows:

1st. Daniel Shaw, the original plaintiff and one of the defendants in error will be designated as, the Plaintiff.

2nd. Bayou Terre-aux-Boeufs Drainage District, the original defendants and one of the defendants in error, will be designated as, the District.

3rd. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District will be designated as, the Board.

4th. Original intervenor and plaintiff in error will be designated as, the Intervenor.

The writer has prepared a complete chronological history of the District and copied the law applicable **in extenso** in the statement of the case, to enable the Court to easily appreciate the law and the facts of the case without going outside of the four corners of this brief.

STATEMENT OF THE CASE.

The Legislature of Louisiana, at the General Session of 1902, re-enacted its drainage laws by Act 159 of that session, and sections 1 and 2 of that act conferred on the police juries of the respective parishes of the state authority to create and delimit drainage districts.

> "Section 1. Be it enacted by the General Assembly of the State of Louisiana, That Act No. 12 of the General Assembly of the State of Louisiana of 1900, approved June 27th, 1900, be amended and re-enacted, so as to read, as follows:

"The Police Juries of the State of Louisiana are authorized and empowered to divide their respective parishes into as many drainage districts, as they may deem necessary or advantageous for the purpose of more readily draining the lands in said parishes; said districts to be known as 'drainage districts,' with such other name or number as the Police Jury may designate; provided that no such district shall contain, within its limits, less than five land owners.

"Section 2. Be it further enacted, etc., That the Police Jury shall have power to fix the limits of such districts. * * *"

Section 2 also provides for boards of drainage commissioners, and the manner of their selection.

Section 4 constitutes the drainage districts so created bodies corporate in law "with all the powers of a corporation," and confers on them "the power and right to incur debts and contract obligations, to sue and be sued, to have a corporate seal, and to do and perform any and all acts in its corporate capacity and in its corporate name necessary and proper, for the purpose of carrying out the purposes and objects of this act."

The powers of the boards of drainage commissioners are set forth in sections 6 and 7.

"Section 6. Be it further enacted, etc., That the said drainage board or commissioners shall have the power, and it shall be their duty, to open all natural drains, which they may deem necessary in their respective districts, and to perform all work therewith connected, which they may deem necessary to make their work effective.

"They shall have full power to make contracts for that purpose, and to approve and accept the the same from the parties with whom the contracts are made, and shall have the further power of cutting and opening new drains or canals, when deemed necessary. Power is especially conferred upon any drainage district, organized under the provisions of this act, and on the commissioners thereof, to secure rights of way necessary for the cutting of canals or other works for the drainage of their district, and to do this they shall have the power to bring expropriation suits, and expropriate lands that may be necessary for the purpose of securing such rights of way.

"Section 7. Be it further enacted, etc., That in order to carry out the provisions of this act, relative to lands situated in said drainage district as herein provided, the commissioners appointed or selected, as aforesaid, shall have the power, when authorized, to do so by a vote of the majority in number and amount of the preperty taxpayers, qualified as electors, under the law and Constitution of the State of Louisiana, voting at an election to be held for that purpose, after due notice of said election shall have been published for thirty days in the official journal of the parish or parishes in which said drainage district is located, and where there is no official journal, in a newspaper published in said parish or parishes, and where no newspaper is published in such parish or parishes then by posting in a conspicuous manner on the Courthouse door, may incur debt and issue negotiable bonds therefor to the amount of one-tenth of the assessed valuation of the property within such drainage district, as shown by the last assessment roll made prior to the submission of the proposition to the taxpayers, as above pro-

vided, and may be authorized by the property taxpayers voting at such election, to levy a special tax on all the property subject to State tax, situated in said district; provided said tax as imposed, does not exceed five mills on the dollar on the assessed valuation on any one year, and provided it does not run for a greater number of years than that stated in the proposition submitted to the voters as aforesaid. And the said drainage districts shall have and possess what other powers are conferred on such districts by Art. 281 of the Constitution of 1898, and the Acts of the General Assembly of Louisiana carrying into effect said article of the Constitution."

Art. 281 of the state constitution of 1898 was amended by a vote of the people of the state of Louisiana, in accordance with Act 122 of the Regular Session of the General Assembly of the state of Louisiana for the year 1906, at an election held in November of that year, and power and authority conferred on the boards of drainage commissioners to levy an annual acreage tax of twenty-five cents per acre and issue bonds therefor, when authorized to do so by a majority in number and amount of the property taxpayers of the drainage districts, qualified to vote at such an election, by adding the following:

"• • • And all drainage districts, established under the laws of this State, shall, in addition to the powers hereinabove granted, have the further power and authority to levy and assess annual contributions or acreage taxes for the purpose of providing and maintaining drainage systems, **on all lands situated in such districts,** not exceeding twenty-five (25c) cents per

> acre for a period not to exceed forty (40) years, when authorized to do so by a vote of a majority in number and amount of the property taxpayers of said districts qualified as electors, under the laws of this State, voting at an election held for that purpose, as provided in the first part of this article, and said drainage districts, through the boards of commissioners thereof, may incur indebtedness and issue negotiable bonds therefor, payable in principal and interest out of, and not to exceed in principal and interest the aggregate amount to be raised by said annual contributions during the period for which the same are levied. No drainage bonds shall be issued for any other purpose than that for which said contributions were voted, and shall not run for a longer period than forty (40) years from their date, nor bear a greater interest than five per cent (5%) per annum, nor be sold for less than par."

The annual acreage tax, authorized by the amendment to art. 281, was increased to fifty cents per acre by an amendment voted by the people, in accordance with Act 197 of the Regular Session of the General Assembly of the state of Louisiana for the year 1910, at an election held in November of that year. In no other respect was the power or authority previously conferred changed.

The power of the boards of commissioners to levy the annual acreage tax of fifty cents was, by amendment to art. 281, voted by the people, in accordance with Act 192 of the Regular Session of the General Assembly of the State of Louisiana for the year 1914, at an election held in November of that year, restricted to "each and every acre of land, which is susceptible of gravity drainage, in

the subdivision where such election is held." This restriction could not operate retrospectively, and no bond issue theretofore issued could be affected thereby; therefore the 1914 amendment is not relevant to this case.

On the 15th of December, 1906, while the provisions of Act 159 of the Regular Session of the General Assembly of the state of Louisiana, quoted and referred to **supra**, were in force, the police jury of St. Bernard parish created the District, legally and politically, and delimited territorially said District, and the Board was organized and assumed jurisdiction of all of its affairs, and of all the lands within its boundaries.

On the 16th of April, 1907, the Board submitted to the property taxpayers of the District, a proposition to levy a five mills on the dollar **ad valorem** tax on all property, and a special annual acreage tax of three cents per acre on all land, situated within the limits of the District, and to fund both taxes into an issue of $100,000.00 of bonds, to be voted on at an election held under Act 145 of the Regular Session of the General Assembly of the state of Louisiana for the year 1902, and the proposition was duly carried and the result promulgated, by publication, as required by law.

Immediately after the election, **Charles Esteves** filed a suit in the Twenty-Ninth Judicial District Court for the parish of St. Bernard, attacking the organization of the District, and assailing the validity of the tax, and asked that the levy and collection of the tax be perpetually enjoined; the organization of the District was attacked on the ground "that a large part of the property included in the District is not susceptible of drainage;" the validity

of the tax was assailed for the reason "that the election at which their levy and the issuance of the bonds was authorized, was held by the Board, instead of under the auspices of the Police Jury." That case was decided against the plaintiff by the Twenty-Ninth Judicial District Court, parish of St. Bernard, which holds its sessions within the limits of the District. An appeal was taken to the Supreme Court of Louisiana, and that court dismissed the attack on the organization of the District; but held the tax to be null, for the reason urged by the plaintiff. **Esteves v. Board of Com'rs. for Bayou Terre-aux-Boeufs Drainage Dist., et al., 121 La., 991.** That case was decided June 22nd, 1908.

In July, 1908, the District was reorganized, and on July 5th and 6th, 1908, to comply with the Supreme Court's interpretation of the law, the police jury passed an ordinance to submit the same proposition to the property taxpayers of the District, at an election to be held on August 15th, 1908. The proposition was duly carried, and the result of the election promulgated, by publication, in the official journal of the parish.

A short time after the promulgation of the result of the election, the Board brought suit against **Earl R. Baker** in the Twenty-Ninth Judicial District Court, parish of St. Bernard, to compel the specific performance of a contract to buy 100 of the bonds of the par value of $1,000.00 each. That suit was defended on the following grounds:

(1) That the election should have been held by the police jury.

(2) That the amount of bonds issued exceeded one-tenth of the assessed valuation of the property in the District, in violation of art. 281 of the constitution.

The judgment of that court was for plaintiff. An appeal was taken to the Supreme Court of Louisiana, and the first ground of defense was maintained, while the second was pronounced to be without merit. **Board of Com'rs for Bayou Terre-aux-Boeufs Drainage District, v. Baker, 123 La., 75.** That case was decided by the Supreme Court on March 1st, 1909.

On December 5th, 1908, the police jury, by ordinance duly adopted, ordered the proposition again submitted to the property taxpayers of the District, at an election to be held on January 9th, 1909, and again the proposition was carried, and the tax voted at the election on August 15th was ratified and confirmed by the property taxpayers of the District, and the result of the election promulgated, by publication, in the official journal of the parish.

On April 26th, 1909, the Supreme Court of Louisiana decided the case of **Buard v. Board of Com'rs of Portage Drainage Dist., of Parish of Pointe Coupee, et al., (123 La., 590)** in which it was held that the boards of drainage commissioners of the drainage districts were the governing bodies of those districts, and that all elections, regulating taxation in the drainage districts, should be held by them and not by the police juries. In that case, all the decisions holding the contrary were overruled.

The Board then called an election to be held on June 14th, 1909, by the property taxpayers of the District, to ratify and confirm the indebtedness, the bonds and the tax, and at that election the indebtedness, the bonds and the tax were ratified and confirmed, and the result of the

election promulgated, by publication, in the official journal of the parish.

At a meeting of the Board, held on June 16th, 1909, resolutions were passed levying the special annual acreage tax of three cents per acre on all lands in the District, and funding the same into an issue of $60,000.00 of negotiable bonds, and levying the **ad valorem** tax of five mills on the dollar, for forty years, on all property in the District, and funding the same into an issue of $40,000.00 of negotiable bonds (Tr., pp. 27-34).

Suit was then brought by the Board against Earl R. Baker for specific performance of his contract to buy the issue of bonds into which said taxes had been funded in the Twenty-Ninth Judicial District Court, parish of St. Bernard, and that court and the Supreme Court both pronounced the bonds valid. **Board of Com'rs for Bayou Terre-aux-Boeufs Drainage Dist. v. Baker, 124 La., 216.** That case was decided June 23rd, 1909.

In that case the Supreme Court of Louisiana stated the issue thus:

> "**Whether a tax of five mills on all assessable property in the plaintiff district,** and another tax of three cents per acre on every acre of land within its limits shall be levied for 40 years, beginning with 1908, for the purpose of draining the district, have been legally imposed, **is the question.**"
> **124 Louisiana, 217.**

The annual acreage tax of three cents per acre was paid by all of the land owners within the District for the year 1909.

On November 20th, 1909, the Board called an election of the property owners of the District to vote on the following propositions:

"1. To vote a tax of six (6) cents per acre on every acre of land in this District, beginning with the year 1910, and for each year thereafter, for forty (40) years, in accordance with Art. 281 of the Constitution of the State of Louisiana, and the Acts of the General Assembly of this State to carry the same into effect.

"2. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness to the extent of one hundred sixty-five thousand dollars ($165,000.00), and to further authorize the said Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to capitalize the tax hereinabove provided for in proposition No. 1 into, and to issue, one hundred and sixty-five (165) negotiable bonds of one thousand dollars ($1,000.00) each, aggregating one hundred sixty-five thousand dollars ($165,000.00), in conformity with Art. 281 of the Constitution of the State of Louisiana, and the laws of the State, said bonds to be secured by the tax of six cents (6c) per acre hereinabove provided, for the principal and interest, until paid. The said bonds to be payable in forty (40) years from February 1st, 1910, redeemable at the option of the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District after ten (10) years from their date, to bear five per cent (5%) per annum interest from their date, until paid, payable annually. And which said bonds the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District is authorized to sell at par, and to devote the proceeds of said sale to the completion of the drainage work in said District.

"3. To cancel and annul, after January 1st, 1910, the **ad valorem** tax of five mills on the dollar on all the assessable property in said District, voted and levied at an election held on August 15th, 1908, and rati[illegible]t the election held in this District on Janu[illegible]1909, and June 14th, 1909, and said Board o[illegible]missioners for said Drainage District is specifically instructed not to enforce the collection of said tax from and after January 1st, 1910.

"4. To cancel and rescind the bond issue of forty thousand dollars ($40,000.00), voted and authorized in this Drainage District by the property holders qualified to vote at the election held January 9th, 1909, and ratified at another election held in this Drainage District on June 14th, 1909, and which said bond issue of forty thousand dollars ($40,000.00) was secured by a tax of five mills on all the assessable property in this District, voted and levied at an election held on August 15th, 1908, and ratified at elections held in this District on January 9th, 1909, and June 14th, 1909."

On December 30th, 1909, the Board met, canvassed the returns of the election, declared that all four propositions had carried, ordered the result promulgated, levied the tax, and ordered the bonds issued and sold (Tr., pp. 34-37).

AND THE BONDS WERE ALL THEREAFTER SOLD. THE INTERVENOR OWNS A PART OF THIS ISSUE (Tr., p. 59).

On July 11th, 1910, the Plaintiff purchased 4,122.50 acres of land, situated within the District (Tr., p. 17);

and paid the three (3) cents and six (6) cents special acreage taxes assessed against his said land for the year 1910.

On July 7th, 1910, at the regular session of that year, the General Assembly of the state of Louisiana passed Act 317 of 1910, which went into effect twenty days after its promulgation. This act was a re-enactment and amendment of Act 159 of 1902; but all drainage districts, organized prior to its passage, were, by section 18, excluded from its effect. The powers of the boards of commissioners of drainage districts, organized under it, were not altered with respect to taxes authorized by art. 281 of the constitution to be levied by a vote of the property owners; but they were enlarged, so as to include an acreage tax that was authorized by the amendment to art. 281 of the constitution, adopted at the November election, to be levied on the petition of property owners within the district. **This constitutional amendment and law could not operate retrospectively, and, therefore, could not affect outstanding bond issues.**

> "Sec. 18. Be it enacted, etc., That all drainage districts, organized under existing laws, which do not desire to avail themselves of the provisions of this act, shall not be affected thereby."

For the purpose of bringing it under the provisions of Act 317 of 1910, on December 3rd, 1910, the District was reorganized, with the same boundaries, and assumed all the assets, obligations and duties of that District as formerly constituted.

On the same day, the Board called an election to submit to the property taxpayers, the following propositions:

> "First: To vote to authorize the levy and assessment of an annual contribution or acreage tax of 16c per acre on every acre of land within the Bayou Terre-aux-Boeufs Drainage District, which levy shall begin with the year 1911, and continue for a total period of forty (40) years consecutively, being the years 1911 to 1950, both inclusive, for the purpose of providing and maintaining an adequate drainage system for said District, in accordance with the provisions of Art. 281 of the Constitution of the State of Louisiana, as amended and adopted in 1910.
>
> "Second: To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of said District of $500,000.00, and to be evidenced by 500 negotiable bonds of the District of $1,000.00 each, in conformity with the provisions of Art. 281 of the Constiution and laws of this State. Said bonds to be secured by and payable out of the annual contribution or acreage tax of 16c per acre to be levied, as above provided. Said bonds to mature within forty years after their date, to contain such provisions for their prior redemption at such times and in such amounts as the Board of Commissioners may, by resolution, determine, bearing interest at 5% per annum from their date, payable semi-annually on the first day of August and of February of each year, commencing with the first day of February, 1912, and the proceeds of the sale of said bonds shall be devoted to the accomplishment of the drainage work of said District."

On January 12th, 1911, the Board met, canvassed the returns of the election, declared both propositions had

carried, levied the tax and ordered the result of the election promulgated, by publication, in the official journal, and authorized the bonds to be issued.

Twenty of the bonds were sold to **George H. Randolph,** and he refused to pay for them, and suit was filed in the Civil District Court, parish of Orleans, to compel him to do so. The grounds of his refusal were:

> "First. That the limiting of said rate of taxation to 16 cents per acre per annum is in violation of article 281 of the Constitution, which allows a rate of 50 cents.
>
> "Second. That the denomination of the said bonds has not been fixed in such a way that the yearly payments in capital and interest shall be as nearly equal as practicable, as is required by section 28 of Act No. 256, p. 426, of 1910.
>
> "Third. That the full amount of said 16 cents tax was levied at once for the entire period of 40 years; whereas, article 281 of the Constitution, as amended by Act No. 197 of 1910, adopted at the November election, 1910, and sections 27 and 29 of Act No. 256, p. 426, of 1910, require that the levy be made annually, and only in an amount sufficient to meet the payments of the bonds in capital and interest as they become due.
>
> "Fourth. That in submitting to a vote of the property taxpayers of the district, the proposition to issue said $500,000.00 of bonds, and to levy said 16 cents tax, the plaintiff district did not, at the same time, submit the proposition to ratify the previsious issues of bonds, as is required to be done by section 17 of said Act No. 317 of 1910."

The judgment of the Civil District Court was for defendant. An appeal was taken by the plaintiff to the

Supreme Court of Louisiana, and that court maintained the third and fourth objections, and affirmed the judgment of the trial court. **Board of Com'rs. for the Bayou Terre-aux-Boeufs Drainage Dist. v. Randolph, 131 La., 244.** That case was decided June 28th, 1912.

The Board then called an election for August 26th, 1912, and re-submitted the two propositions, together with propositions to ratify and approve the two previous bond issues.

On August 28th, 1912, the Board met, canvassed the returns of the election, found that all propositions had carried, ordered the result promulgated, by publication in the official journal, levied the taxes of 1912, and authorized the 500 bonds to be issued (Tr., pp. 37-41).

During the years 1907 to 1909, as has been shown **supra**, there were five elections held in the District, at which a majority in number and amount of property taxpayers voted on the propositions to levy the three (3) cents and six (6) cents annual acreage taxes throughout the District. The elections were given the utmost publicity, because they were held under the provisions of Act 145 of the Regular Session of the General Assembly of the state of Louisiana for the year 1902, and sec. 2 of that act provides for full notice:

> "Sec. 2. Be it further enacted, etc., That the notices of election called for the submission of any proposition named in Section 1 of this act, petitioned for or ordered as aforesaid, shall be published for thirty days in the official journal of the municipality or parish, and where there is no official journal in a newspaper published therein or where no newspaper is published in the parish,

> then by posting in three conspicuous places in the parish, municipality or drainage district, such notices to set forth in detail the purpose or purposes for which the debt is to be incurred, the bonds to be issued or the taxes levied, the amount of said bonds, and said debt, the rate of interest the said bonds are to bear, the time from which they are to run, the rate of taxation and the number of years said tax is to be levied. Said notice shall further state that the authorities ordering said election will, in open session, to be held on the day, hour and place named in said notice, proceed to open the ballot boxes, examine and count the ballots in number and amount, examine and canvass the returns and declare the result of the election."

Two elections were held in the years 1911 and 1912, the first to vote the annual acreage tax of sixteen (16) cents per acre, and to fund the same into $500,000.00 of bonds; the second to vote the said tax and said bonds, and also to ratify and confirm the two previous tax levies and bond issues. These elections were held under Act 256 of the Regular Session of the General Assembly of the state of Louisiana for the year 1910, and section 3 of that act provides for the same sort of notice as does the similar act of 1902.

The right was reserved, by law, to each property owner to attack the proceedings imposing the special annual acreage tax.

Act 145 of the Regular Session of the General Assembly of the state of Louisiana for the year 1902:

> "Sec. 16. Be it further enacted, etc., That from and after a delay of six months from the date of the promulgation of the result of any such election,

no one shall have any cause of action to contest the regularity, formality or legality of the petition of the taxpayers or the resolution calling for any election herein provided for, of the ordering, of the notice of same, of the holding of same, of the returns thereof, of the examination and count of the ballots, of the examination and canvass of the returns, of the declaration of the results, or of the promulgation of the results of any such election; or of any other formality or requirement in relation thereto, and that, after such delay all such causes of action shall be lapsed, barred and prescribed."

Act 256 of the Regular Session of the State of Louisiana for the year 1910:

"Sec. 17. Be it further enacted, etc., That for a period of sixty days from the date of the promulgation of the result of any such election, any person in interest shall have the right to contest the legality of such election, for any cause; after which time no one shall have any cause of action to contest the regularity, formality, or legality of said election, for any cause whatever. If the validity of any election held under the provisions of this act is not raised within the sixty days herein prescribed, then no governing authority of any subdivision herein named, required to levy a tax or issue bonds, as authorized at an election held under this act, shall be permitted to refuse to perform that duty and urge as an excuse or reason therefor, that some provisions of the Constitution or law of Louisiana has not been complied with, but it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such

matters, after the lapse of sixty days as herein provided.

"Sec. 31. Be it further enacted, etc., That all bonds issued by any of the subdivisions of the State, as herein defined, shall, after the time has elapsed, in which the validity of such bonds can be contested, to-wit: sixty days from the promulgation of the result of the election incurring the debt and issuing the bonds, be registered by the Secretary of State, and shall have endorsed thereon the words 'This bond secured by a tax. Registered on this — day of —, 191—,' and signed by the Secretary of State, with the Great Seal of Louisiana affixed."

Sections 22, 23 and 24 of Act 145 of the Regular Session of the General Assembly of the state of Louisiana for the year 1902, as amended by Act 299 of the Regular Session of the General Assembly of the state of Louisiana for the year 1908, and sections 25, 26, 27, 28, 29, 30 and 31 of Act 256 of the Regular Session of the General Assembly of the state of Louisiana for the year 1910, in ordering the disposition of the proceeds of the special annual acreage tax authorized by art. 281 of the state constitution, and that article make it perfectly plain that the proceedings by which such tax is voted form part of the bond contract and are inseparable from the bonds, because, among other reasons, the tax is dedicated to the payment of the bonds, and the bonds have no other foundation upon which to rest.

Act 145 of 1902, as amended by Act 299 of 1908:

"Section 22. Be it further enacted, etc., That the proceeds realized from the sale of all bonds

issued under the provisions of this act shall constitute a trust fund to be devoted exclusively to the purpose or purposes for which said bonds were issued, or in cases taxes are levied for the purpose of making improvements without issuing bonds, then the taxes thus collected shall constitute a trust fund to be devoted exclusively to the purpose or purposes for which said tax was levied and collected. Such funds shall be kept separate from all other revenues of the municipality, parish or drainage districts, issuing said bonds or levying said tax. When taxes are levied for the purpose of paying the principal and interest upon the bonds issued, or upon bonds thereafter issued and charged upon said taxes as hereinbefore provided, then said tax when collected shall be applied to such purpose exclusively, as hereinafter provided.

"It shall be lawful for the governing body of any such municipal corporation, parish or drainage district so long as any of said bonds are outstanding and unpaid, from time to time by resolution, to set aside in whole or in part the net revenues derived from the public improvements purchased or constructed, from public markets, water works or lighting systems, after the expenses of the maintenance of such improvements, public markets, water works or lighting systems, have been paid, and to pay the same when so set aside into the 'general sinking fund', hereafter referred to. Provided, however, that such legislative body may at the time of issuing any bonds, pledge and appropriate said net revenue, in whole or in part, to the payment of such bonds and the interest thereon and in that event the net revenues so pledged and appropriated shall be devoted exclusively to the payment of the interest and principal

of the bonds to which they are so pledged and appropriated.

"Section 23. Be it further enacted, etc., That whenever taxes have been levied for the purpose of paying the principal and interest of bonds issued, or of bonds thereafter issued and charged upon said taxes, in whole or in part, as hereinbefore provided, the proceeds of the collection of said taxes shall annually after the payment therefrom of the interest on said bonds be paid into a separate fund to be known as the 'general sinking fund,' which fund shall be securely kept separate and apart from all other funds of said municipality, parish or drainage district, deposited at interest in such banks or trust companies as may be designated by resolution of the legislative body of the municipality, parish or drainage district, and from time to time safely invested in the manner hereinafter provided, and the same shall be applied, together with any accumulations or additions thereto arising from such investment, interest, or from any other source, to the payment of the principal of the indebtedness of said municipality incurred in anticipation of the collection of such taxes, as the same become due and payable, and to no other purpose whatever. Said sinking fund shall from time to time be invested in the lawfully issued interest bearing obligations of the United States, or of any of the States thereof, or of any city or parish in the State of Louisiana, provided the net interest rate received on such investment shall not be less than three (3%) per cent per annum. Whenever a debt is incurred or bonds are issued by any municipality, parish or drainage district, under the provisions of this act, such municipality, parish or drainage district shall, beginning at a yearly period from the maturity of such debts or bonds, which

period shall never be less than one-fourth (1-4) of the whole term for which the said debt is incurred or said bonds are issued, set aside annually from said 'general sinking fund,' as a specific sinking fund for the payment of said debts or bonds, at least one fraction of the principal of said debt or of said bonds, said fraction to be ascertained by dividing the principal of said debt or of said bonds by the remaining number of whole years before the maturity of said debt or bonds; and the specific sinking fund thus set aside shall be sacredly applied, as rapidly as may be, to the payment of such debt and such bonds, the time from the commencement of the provision of such specific sinking fund as herein provided until the maturity of said debt or said bonds to be known as the redemption period.

"Section 24. Be it further enacted, etc., That when the number of years such debt or bonds, or any of them are to run shall have been determined, the municipality, parish or drainage district about to incur such debt or to issue such bonds, shall, before doing so, fix by resolution or ordinance the years for commencing the provisions of the specific fund required by this act; and after fixing said year, shall have the option of paying any part or all of said debt or of said bonds at any annual or semi-annual interest period, during the redemption period, upon giving to the holder or holders of said debt or of said bonds sixty (60) days' notice by mail, or by one publication in a newspaper published in the City of New Orleans, of the intention to exercise such option at the next succeeding annual or semi-annual interest payment period, by calling for payment the part or all of said debts or of said bonds named in such notices; provided that said bonds shall be called and paid in the

order to be determined by lot at the date at which any portion of the said bonds are to be paid, notice of such payment to be included in the notice provided for in this section; provided further that the part of all of said debt or of said bonds called for payment as aforesaid, shall cease to bear interest from the date of payment named in said notice, unless default in payment is made on demand for payment in accordance with said notice.

"Provided that the authority issuing the bonds, if it does not desire to issue bonds as contemplated in the first part of this section, shall have the right to issue serial bonds to be paid one or more at a time, either annually or semi-annually, as may be designated by such authority, in which event, the bond or bonds shall run the full time named on the face thereof, but with the right to redeem any or all of said bonds after the expiration of any period fixed in the ordinance or resolution adopted by the authority issuing the bonds."

Act 256 of 1910:

"Section 25. Be it further enacted, etc., That the proceeds of any special tax which have been voted for a particular purpose as authorized by the Constitution and the provisions of this act shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied and shall from year to year as collected be kept separate and used for no other purpose than the purpose for which the said tax was voted.

"Section 26. Be it further enacted, etc., That if the bonds to be issued are to be paid out of funds realized from a tax, an acreage tax or forced contribution, which tax, acreage tax or forced contribution is limited and a fixed amount required to

be collected each year, then the governing authority issuing the bonds and levying the acreage tax, shall, beginning at a yearly period before the maturity of such debt or bonds, which period shall never be less than one-fourth of the whole term for which said debt is incurred, or said bonds are issued, set aside annually, from said trust fund derived from said tax, acreage tax or forced contribution, a sinking fund for the payment of the principal of said debt or of said bonds, at least one fraction of the principal of said debt or of said bonds, said fraction to be ascertained by dividing the principal of said debt or of said bonds by the remaining number of whole years before the maturity of said debt or bonds; and that the sinking fund thus set aside shall be sacredly applied to the payment of such debt and such bonds. The time from the commencement of the provision of a sinking fund as herein required, until the maturity of the said debt or of said bonds to be known as the redemption period.

"Section 27. Be it further enacted, etc., That the governing authority of a subdivision incurring debt and issuing bonds as herein contemplated, shall annually, at the same time that other taxes are levied, or at any other time, in addition to all other taxes now authorized by the Constitution and laws of the State of Louisiana, and in addition to any special tax that may be levied at any election called and held for that purpose levy a tax sufficient to pay the interest and principal on said bonds becoming due the ensuing year. When a period is fixed at which such bonds shall begin to mature, the total amount of indebtedness shall be divided among the number of years in which payments are to be made and the principal to be paid each year, fixed at such amount that when the total annual

interest is added thereto the amount to be paid each year shall be as nearly equal and uniform as possible. Such tax may be levied and extended upon the assessment roll at any time prior to the final collection of the taxes for that particular year. If the authority herein authorized to levy and assess such tax should fail, neglect or refuse to do so before the completion of the assessment rolls, the Auditor of Public Accounts shall be authorized and it shall be his duty to name the rate of such tax and order same extended upon the assessment rolls and collected.

"Section 28. Be it further enacted, etc., That whenever a debt has been authorized to be incurred, the governing authority issuing bonds to evidence such debt shall fix a time certain at which the bonds shall begin to mature, which shall not be longer than five years from the date of said bonds. After fixing such date, then the governing authorities shall fix the denomination of the bonds due each year thereafter for an amount that when the annual interest is added thereto the total amount to be paid, including principal and interest, each year shall be as nearly equal as practicable.

"Section 29. Be it further enacted, etc., That if the bonds authorized to be issued are to be paid in principal and interest by the annual levying of an acreage tax or forced contribution for an amount to pay the interest and principal of such bonds, then the governing authority creating the debt and issuing the bonds shall fix a time, which shall not be longer than five years from the date of the bonds for the beginning of the maturity of such bonds, and such governing authority shall assess and collect such acreage tax or forced contribution as shall be necessary to pay the annual interest due upon the bonds and maintain the

works or drainage of the subdivision issuing the bonds until said bonds begin to mature, after which time a sufficient acreage tax or forced contribution shall be levied and collected each year as will maintain the works or drainage system and pay the annual interest due on all the outstanding bonds and the principal of the bond or bonds next due. That in fixing the amount due each year, the governing authority issuing the bonds shall issue same for such denominations as when the annual interest is added thereto, shall make the payments each year as nearly equal and uniform as practicable.

"Section 30. Be it further enacted, etc., That when any election is held by the authority of any levee board of this State for the purpose of voting a tax or forced contribution and there is no special law governing such election, then same shall be held under the provisions of this act as far as practicable.

"Section 31. Be it further enacted, etc., That all bonds issued by any of the subdivisions of the State as herein defined, shall, after the time has elapsed in which the validity of such bonds can be contested, to-wit, sixty days from the date of the promulgation of the result of the election, incurring the debt and ordering the issuing of such bonds, be registered by the Secretary of State and shall have endorsed thereon the words: 'This bond secured by a tax. Registered on this the — day of —, 19—,' and signed by the Secretary of State with the Great Seal of Louisiana affixed."

Paragraph 2 of art. 281 of the state constitution, as amended by Act 132 of the Regular Session of the General Assembly of the state of Louisiana, adopted by a

vote of the people in November of that year, validated all bond issues theretofore issued under that paragraph.

> "All bond issues heretofore authorized by taxpayers in any subdivision, at any election not contested on any ground of fraud, are hereby recognized and validated."

Art. 281 of the constitution of the state of Louisiana, as amended by Act 192 of the Regular Session of the General Assembly of the state of Louisiana for the year 1914, adopted by the people at the November election of that year, and all bonds theretofore issued, under that article, were validated, and the power or jurisdiction of the courts of the state to try any case questioning their validity or constitutionality, where the delay of sixty days, within which the proceedings could be attacked, had expired, was withdrawn.

> "All bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing authority of any subdivision, which have heretofore not been declared invalid by a judgment of the court of last resort in the State of Louisiana, and more than sixty days have elapsed since the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned."

In June, 1913, the Plaintiff obtained a preliminary injunction from the Twenty-Ninth Judicial District Court,

parish of St. Bernard, restraining the Sheriff of St. Bernard parish from selling for the acreage taxes [three (3), six (6) and sixteen (16) cents per acre] of the years 1911 and 1912, the land purchased by him in July, 1910, in the District, then a legally organized subdivision of the state of Louisiana, and alleged that he had offered to pay all the taxes claimed, save those levied by the Board for drainage purposes, and that his offer had been refused; and further alleged, as the sole reason why the injunction should be perpetuated and said acreage taxes cancelled and annulled:

> "That all of said above described lands lie outside of the levee system, which the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of St. Bernard Parish are building, or propose to build, for the purpose of draining the lands within the Drainage District, established by the said Board, and his said lands will not receive any benefits therefrom.
>
> "That his said above described lands have been erroneously assessed for the said drainage tax, and the assessment of said tax for the years 1911, 1912, and 1913, should be cancelled and annulled for the reason that in accordance with Section 21 of Act 317 of 1910, and Section 21 of Act 219 of 1912, such acreage tax shall only be imposed upon such lands in the districts as are especially benefited by the drainage, and his said above described lands will not be benefited by the drainage contemplated by said Board" (Tr., pp. 1-3).

The Board filed an exception of lack of interest in the Plaintiff, based on the fact that the property purchased by him in 1910 had been sold to the state of Louisiana

in 1912, for the taxes of 1911, and, in answer, the following defenses were urged:

> "Respondent denies that the lands in question lie outside of any levee system, which the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District are building, or propose to build, for the purpose of draining the lands within the District, **and denies specifically that the lands will receive no benefit from the system of taxation imposed upon them,** but respondent specifically avers that said lands are within the limits of the Drainage District, and subject to all general drainage taxes voted by the property taxpayers therein.
>
> "Respondent further denies that there has been any erroneous assessment of the drainage tax for the years 1911, 1912 and 1913, and denies more specifically that the tax has been imposed or levied under the terms and conditions set forth in Section 21 of Act 317 of 1910 or that there have been imposed any taxes for the purpose of reclaiming lands by artificial means, or by leveeing and pumping, as set forth in paragraph 3 of Article 281 of the Constitution of 1898, as amended in 1912.
>
> "Your respondent admits that the lands are advertised for sale for taxes for the year 1912 and were advertised to be sold on the 28th day of June, 1913, when enjoined by these proceedings.
>
> "Your respondent denies that there was tendered to the Sheriff and ex-Officio Tax Collector the amount of taxes due.
>
> "Your respondent denies that the sale of the property could cause to the petitioner herein any injury whatsoever inasmuch as the property was sold for taxes, drainage as well as general taxes for the taxes due in 1911, but admits that the property is assessed for two thousand sixty-one dollars.

"Now your respondent specifically represents that the Bayou Terre-aux-Boeufs Drainage District was organized by the Police Jury of the Parish of St. Bernard, by an ordinance passed on the 6th day of July, 1908, and assumed jurisdiction for the drainage purposes over all of the territory incorporated within the limits of said Drainage District, and within the boundaries set forth by the creating ordinance of the Police Jury, which said boundaries are specifically defined as follows:

" 'The lower portion of the Third Ward of the Parish of St. Bernard, beginning at the upper line of the Poydras Plantation, all of the Fourth Ward, all of the Fifth Ward, all of the Sixth Ward, as they are at present constituted and situated, and all of that portion of the Seventh Ward, south of the North Township line of Township 12, West of the East Range line of Range 17.'

"Your respondent further submits that after the creation of the Drainage District as set forth by the ordinance of the Police Jury in July, 1908, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District conducted litigation contradictorily with taxpayers within that district to establish the validity of its creating ordinance and to establish the validity of the taxes authorized to be levied and bonds authorized to be issued at an election held in said Drainage District at that time and subsequently thereto. As the result of the authority conferred at election held in the District, a bond issue of sixty thousand ($60,000.00) dollars was authorized, based on a three cents an acre tax in the whole District. That bond issue was attacked by property taxpayers and made the subject of specific litigation in the case of **Baker v Board, 124 Louisiana, page 216,** wherein the Honorable Supreme Court of this State, affirming the

validity of the creation of the said Drainage District and the validity of the bonds issued as the result of the election held, placed its stamp of approval upon the legal issues involved in its creation and involved in the indebtedness thus incurred.

"Your respondent further represents that at another election held in the Bayou Terre-aux-Boeufs Drainage District on the 28th day of December, 1909, there was submitted to the property taxpayers the proposition to authorize a bond issue of one hundred and sixty-five thouasnd ($165,000.00) dollars, based on an acreage tax of six cents per acre per year, and that bond issue as well as the previous of sixty thousand ($60,000.00) dollars was sold at par, and the monies expended for the improvement of drainage in the Bayou Terre-aux-Boeufs Drainage District; that these various bond issues and the organization of the District itself antedated the acquisition by the petitioner in this cause of the property described by him and which, according to the allegations of his petition, he purchased on the — day of —, 1910, registered in Conveyance Book 22, Folio 226, and that, therefore, when Daniel Shaw acquired from Harley R. Welsh, the property described in his petition, he acquired said property with full knowledge of the jurisdiction of the Drainage Board, with full knowledge of the taxes voted and imposed prior to the acquisition of the said property, and your respondent further represents that the said Daniel Shaw paid the said acre taxes due for the year 1910 upon said property, and, therefore, acquiesced in their levy and imposition for drainage purposes.

"Your respondent further represents that after the passage of the amendment to the Constitution known as Act No. 197 for the Session of 1910,

whereby the authority was conferred upon the drainage districts in this State to reorganize to take advantage of the new conditions imposed by said amendment to the Constitution, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District was reorganized on the 3rd day of December, 1910, with the same limits and the same boundaries as previously established, and the Commissioners were appointed for the reorganized District to carry into operation and effect the work of drainage auspiciously begun; that at an election held on the 10th day of January, 1911, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District was authorized to levy a tax of sixteen cents per acre and to incur indebtedness and issue bonds to the extent of five hundred thousand ($500,000.00) dollars, to extend the operation of the drainage begun by the said Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and at an election held on that date, said tax was authorized by the property taxpaying voters of the District, and the bond issue also authorized; that this bond issue was seriously contested in the case of **Geo. H. Randolph v. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District,** which case went to the Supreme Court and is reported in the **131 Louisiana Reports, page 244,** wherein the Supreme Court refused to declare null and void the tax of sixteen cents an acre voted therein, but declared that the bond was not a good bond for the reason that the Board of Commissioners had failed to comply with Section 17 of Act 317 of 1910. In that case the Court also held that the levy of taxes must be made each year and not at one time for the whole period of time for which the bond was to run, but specifically held that all this would not be cause to invalidate either

the tax or the bond. Complying, therefore, with the decision of the Supreme Court, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District called an election after proper notice, on the 26th day of August, 1912, and submitted to the property taxpayers qualified to vote at that election, the following propositions:

"1st. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of five hundred thousand ($500,000.00) dollars, to be evidenced by five hundred (500) negotiable bonds with interest bearing coupons attached, of one thousand dollars ($1,000.00) each, in conformity with the provisions of Article 281 of the Constitution and laws of this State, said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this District at the election held on the 10th day of January, 1911, the said bonds to mature within forty (40) years after their date, and to contain provisions for their prior redemption, at such times and in such amounts as the Board of Commissioners may, by resolution, determine, and said bonds to bear five (5%) per cent per annum interest from their date, payable semi-annually on the first day of August and February of each year, commencing with the first day of February, 1913, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said District as in the opinion of the Board of Commissioners may be most desirable.

" '2nd. To vote to confirm and approve the imposition and levy of an annual contribution or acreage tax of sixteen cents per acre, voted at election held in this District on the 10th day of January, 1911, the said tax to run for a period not longer than forty (40) years from the date of its

imposition and the said tax to be funded into bonds in accordance with law.

" '3rd. To vote to ratify and approve the bond issue of sixty thousand ($60,000.00) dollars, ratified at an election held on the 14th day of June, 1909.

" '4th. To vote to ratify and approve the bond issue of one hundred and sixty-five thousand ($165,000.00) dollars, voted at an election held on the 28th day of December, 1909.'

"Your respondent further submits that the election was held as set forth, the returns of said election were duly canvassed by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District and that a tax to the maximum extent of sixteen (16c) cents an acre was duly authorized to provide for the retirement in principal and interest of a bond issue of five hundred thousand ($500,000.00) dollars, for drainage work in the said Bayou Terre-aux-Boeufs Drainage District.

"Your respondent further represents that pending this litigation the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District actively progressed with the work of drainage, with the opening of natural outlets in said District and the principal work that has been done in said Drainage District to this date has been the opening of the natural outlets in the said Drainage District, notably the clearing out and dredging of Bayou Terre-aux-Boeufs, of Bayou LaLoutre and the digging of additional canals to make, as far as it lies within the power of the Board, a continuous and comprehensive system of drainage that would be resultant of the greatest good to the greatest number of property holders in the District.

"Your respondent further submits that it has expended in the said Drainage District, out of the bonds thus authorized, the entire amount of the first bond issue of sixty thousand ($60,000.00) dollars, which was sold at par, the entire amount of the bond issue of one hundred and sixty-five thousand dollars ($165,000.00), which was sold at par, and approximately two hundred and fifty thousand ($250,000.00) dollars of the five hundred thousand ($500,000.00) dollar bond issue lastly referred to, and which have been sold at par to pay for the work of general drainage in the said Bayou Terre-aux-Boeufs Drainage District.

"Your respondent further submits that the Bayou Terre-aux-Boeufs Drainage District do not propose and do not contemplate with the taxes hereabove referred to to reclaim by leveeing and pumping any portion of the lands included within the limits of the Bayou Terre-aux-Boeufs Drainage District, but simply propose a comprehensive scheme of general drainage that will give outlet for all of the waters in the said Bayou Terre-aux-Boeufs Drainage District. That subsequent to all these proceedings there have been created in said Bayou Terre-aux-Boeufs Drainage District three sub-drainage districts, which sub-drainage districts are making use of the general work for general drainage inaugurated by your respondent herein, and which sub-drainage districts have by petition of two-thirds of the number of acres in the sub-drainage district affected, asked for bond issues to accomplish the reclamation of leveeing and pumping of the particular acreage within the limits of said sub-drainage district, but that petitioner's property is in no wise included in any of the sub-drainage districts yet formed, and is in no wise affected by

the taxes levied for the benefit of such particular sub-drainage districts, and therefore, is not concerned or interested in the development of said sub-drainage districts or in the levy of taxes inaugurated therein.

"**Your respondent avers, however, that petitioner herein has received an enormous benefit and is receiving an enormous benefit from the general drainage taxes levied in the Bayou Terre-aux-Boeufs Drainage District, for the reason that there has been an enormous enhancement in the valuation of properties in the said District since the work of general drainage has been begun and since the active dredging of the natural outlets of said Drainage District have been inaugurated.**

"Respondent further avers that petitioner's lands have and will enhance in value as a result of the work accomplished and to be done and will be more valuable if he does with his lands what other property owners are doing with theirs, i. e., to have them incorporated in a sub-drainage district and to have them leveed and pumped by artificial means to accomplish their complete reclamation, and that, to that end, respondent is willing and has always been willing to encourage any property holder in the development of his holdings and in making the same available for cultivation and use, but respondent avers and believes that petitioner is merely speculating on the enhanced valuation of lands without wishing to pay for the general work of public improvement.

"Now, respondent submits that petitioner herein simply undertakes a general and wholesale and indiscriminate attack upon a system of drainage taxation in this District, the only property holder of record objecting to the system of taxation after subscribing his acquiescence heretofore by the pay-

ment of said tax, and after subscribing his acquiescence by the purchase of the property subject to the exactions and conditions of property taxpayers qualified to vote, and after submission of his property and himself to the jurisdiction of a constituted agency of the State.

"Your respondent further submits that all of the taxes referred to herein have been rgularly authorized at an election of the property taxpayers qualified to vote; that the taxes have been properly assessed and levied; that the bond issues have been authorized as the result of said elections; that the elections have been regularly held and have not been contested on any ground of fraud. The period of time fixed by the statutes, notably by Act 256 of 1910 and Act 218 of 1912 prescribe a period of time, sixty (60) days, wherein the property taxpayer has a right to appear to contest the validity of any tax voted at an election of the people in any given district, and no contest was made within the period of time fixed by law, either by the petitioner herein or by any other taxpayer or person in interest, and respondent pleads this legal estoppel.

"In addition to this your respondent further avers, that Article 281 of the Constitution of Louisiana was amended by the terms and conditions of Act 132 of the Session of 1912 and that paragraph two of said Article provides that 'all bond issues heretofore authorized by taxpayers in any subdivision at any election not contested on any ground of fraud, are hereby recognized and validated,' that all of the taxes heretofore enumerated and all of the bond issues heretofore set forth in said district were authorized by property taxpayers prior to the passage of this Article at an election of the people held on the — day of November,

1912, and that this amendment to the Constitution, as adopted by the people in November, 1912, is a sweeping validation of all bond issues where no contests on any ground of fraud has been raised against said election authorizing said bond issue; that, therefore, every one of the bonds issued by the Bayou Terre-aux-Boeufs Drainage District authorized at an election of the people as set forth in this answer and as attacked by the plaintiff in his petition herein, are covered by the sweeping validation as set forth, and are not subject now to attack by the property taxpayers.

"Your respondent further avers that in absolute good faith and relying upon the various legal conditions herein set forth, it has sold the bond issues as enumerated in this answer, and that the said bonds have gone in the hands of innocent third parties who are relying upon the good faith of your respondent board to carry out the terms of the contract whereby the said bonds are to be paid in principal and interest; that according to the certificate of the Assessor of St. Bernard Parish, it is shown that there are (220,000) two hundred and twenty thousand acres of land subject to taxation and that that number of acres at the maximum rate of taxation was duly considered in figuring out the scheme of redemption of the bonds.

"Your respondent further sets forth that any impairment of the terms of that contract by the releasing of any property owners from the obligation to pay the taxes imposed, would be an impairment of the obligation of the bonds thus issued in good faith and held in good faith by those who have taken the same; that every bond was sold and converted into cash, the said cash has been paid out for actual work done and labor performed in the construction of canals and in the opening of the

natural outlets as shown in this answer, located within the limits of the said Bayou Terre-aux-Boeufs Drainage District, all of which was necessary and is necessary to accomplish a comprehensive system of drainage in said District, and to allow the successive formation of various sub-drainage districts or reclamation units in the territory over which your respondent has jurisdiction.

"Respondent specifically avers that the Bayou Terre-aux-Boeufs Drainage District is composed partly of lands that are high and subject to drainage by gravitation without the necessity of leveeing and pumping, and largely of lands that are low and marshy and that are unfit for cultivation unless subjected to reclamation by leveeing and pumping, but that the great bulk, almost the entire acreage of low marshy lands, owes a servitude of drainage to the higher lands which are to be drained by gravitation; that in order, therefore, to create the comprehensive system of drainage necessary to take care of all of the waters of the Drainage District, it was essential and necessary to deepen, open and clear the natural outlets and bayous that form the natural drains of the entire district, and to make such connections of canals with such natural outlets as would at least place natural drainage in reach of the large bulk of the property in the Drainage District, to place it in such reach at least, as would give every reclamation unit formed in that District an outfall into the drainage system of the District.

"Therefore, your respondent submits that the suit of this plaintiff should be dismissed" (Tr., pp. 8-14).

The District prayed that the injunction issued be dissolved and that the suit of Plaintiff be dismissed, at his

cost, and that there be judgment recognizing the validity of the proceedings **entailed (sic)** by respondent in levying the taxes to take care of the various bond issues that have been issued in the District, and for all general and equitable relief.

Intervenor filed a petition of intervention and joined with the Board in resisting the demand of Plaintiff. The right of intervention is based upon the following allegations:

> "Petitioner represents that he is the owner of three bonds issued by the Bayou Terre-aux-Boeufs Drainage District of St. Bernard Parish, La., bearing the Nos. 5, 8 and 105, dated February 1st, 1910, payable February 1st, 1950, each for the sum of one thousand dollars, which said bonds were issued by said District, pursuant to proceedings in respect to and authorized at an election December 28th, 1909.
>
> "That petitioner joins defendant in resisting the demands of plaintiff, and adopts all the averments of defendant, contained in its answer, copy of which is hereto annexed and made part hereof" (Tr., p. 15).

It is, therefore, apparent that the sole cause of action propounded by Plaintiff was that his property had received no benefit from the system of drainage in process of being installed, and that fact is most emphatically denied by the Board and Intervenor.

When the case was being tried in the Twenty-Ninth Judicial District Court, St. Bernard parish, the Plaintiff offered certain evidence, which was objected to by counsel for Intervenor. The trial judge inquired the purpose

of the question. The answer of counsel for Plaintiff to this question was:

> "The purpose of the question is to prove the allegation of our petition; particularly, that the above described lands lie outside of the levee system which the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of St. Bernard Parish are building, or propose to build, for the purpose of draining the lands within the Drainage District established by said Board, and that said lands will not receive any benefit therefrom. This objection goes to the entire case. It is an exception of no cause of action really, and it must admit, for the purpose of argument, all the averments of our petition, it is as much as to say you prove all of the averments of your petition, and yet you are not entitled to judgment. We offer this evidence for the purpose of showing these lands belonging to Daniel Shaw are islands in the Gulf of Mexico, and for that reason are not liable for a drainage tax" (Tr., p. 50).

The attorney for Intervenor then made the following objection:

> "I object to this kind of evidence going in on the question of benefits to be derived, and also object on the ground that the attack started is in effect an attack upon the validity of the taxes levied by the Bayou Terre-aux-Boeufs Drainage District, and is also, in effect, an attack upon the validity of the bonds issued by the Bayou Terre-aux-Boeufs Drainage District, which are to be paid with the proceeds of those taxes; and my objection is further, that the said bonds were voted, and the said taxes were voted, and the said bonds were

issued and sold, as set forth in the petition, prior to a constitutional amendment adopted in November, 1912, that was a sweeping validation of bonds previously authorized by a vote of the people, not contested on any ground of fraud; and there being no issue of fraud in this case, no evidence is admissible until it is shown that the bonds do not come within the validating effects of Article 281 of the Constitution" (Tr., p. 50).

By the Court: "The Court considering the pleadings, and the authorities submitted, and the law governing the situation of the Board, can arrive at but one conlusion, and that is to sustain the objection" (Tr., p. 50).

Later on, there was another attempt by the attorneys for the Plaintiff to go into the question of benefits, and the objection previously made by Intervenor's counsel was renewed, as follows:

"I object, if your Honor please, on the ground if the purpose of this question is to ascertain, or to go into the question of benefits as shown, for the property of the plaintiff, relatively to the drainage system being inaugurated by the District, that while it has been disposed of by the court and is covered by the ruling of the court, there is no reason why it should be asked a second time" (Tr., p. 53).

Again, in connection with the cross-examination of one of Intervenor's witnesses it was attempted to go into the question of benefits, and the following objection was made by Intervenor's attorney:

"I object, if your Honor please, if the purpose of the offer of the map is to show the physical con-

dition of the property, or the benefits that the property is not to receive from the drainage tax. It is not a judicial question, but a legislative question. My sole purpose in offering Mr. Langworthy was to refute the repeated suggestions that these lands were islands in the Gulf of Mexico'' (Tr., p. 57).

By the Court: ''The court overrules the objection; but does not infer or mean that this ruling shall refer to the question of benefits accruing. The Court permits the filing of the abstract limiting the ruling that it should not apply to the question of benefits'' (Tr., p. 57).

And all testimony thereafter offered, as to benefits, was excluded, under the objections reproduced **supra**, and the case was finally closed, without any evidence on the question of benefits having been received.

Judgment was rendered by the trial judge in favor of the Board and Intervenor, rejecting and dismissing Plaintiff's demand (Tr., p. 41).

Plaintiff appealed to the Supreme Court of Louisiana. In the Supreme Court of Louisiana, Intervenor moved to dismiss the appeal upon the ground that the Supreme Court of Louisiana was without jurisdiction to entertain the case, because, under the circumstances of this case, an attack on the acreage tax was tantamount to an attack on the bonds owned by Intervenor, and the right of the court to try that case on appeal had been withdrawn by the amendment to art. 281 of the state constitution, proposed by Act 192 of the Regular Session of the General Assembly of the state of Louisiana for the year 1914, and adopted by the people at the November election of that year, which reads in part, as follows:

> "That all bonds heretofore issued, under and by virtue of this Article 281 of the Constitution, by the governing authority of any subdivision, which have heretofore not been declared invalid by a judgment of a court of last resort in the State of Louisiana, and more than sixty days have elapsed since the promulgation of the proceedings evidencing the issue of said bonds, are hereby recognized and declared to be valid existing bonds and obligations of the district or sub-division issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned" (Tr., pp. 64-65).

The motion to dismiss was denied (Tr., p. 69).

The Supreme Court of Louisiana handed down a decision, affirming the judgment appealed from (Tr., pp. 67-74). Before the judgment became final, this court decided the case of **Myles Salt Co. v. Board of Com'rs of Iberia and St. Mary Drainage Dist., 239 U. S., p. 478**, and on the authority of that decision, an application for a rehearing was made and granted (Tr., pp. 75-77). The Supreme Court of Louisiana then recalled its prior judgment, reversed the judgment of the Twenty-Ninth Judicial District Court, and rendered a final judgment in favor of Plaintiff, "decreeing the acreage taxes or forced contributions of 25c per acre on Plaintiff's property, described in the petition in this case, for the years 1911, 1912 and 1913, to be null, void and of no effect, and that the same be cancelled, and that the preliminary injunction issued herein be perpetuated, insofar as said assessments and forced contributions are concerned" (Tr., pp. 85-91).

That decree was rendered by the Supreme Court of Louisiana, with no evidence before the court, and without the case having been tried on the question of fact constituting the sole cause of action propounded by the Plaintiff.

Intervenor then presented an application for a rehearing, embodying the assignment of errors filed in connection with the application for a writ of error to this court, which the Supreme Court of Louisiana refused to receive or consider, by reason of section 4, rule XIV, of that court:

> "Section 4. Only one rehearing shall be granted, unless some question has been decided, on the rehearing granted, which had not before been considered, and the court has reserved the right to make another application" (Tr., p. 91).

Intervenor applied for a writ of error to this court, which was granted, and filed therewith the following assignment of errors:

ASSIGNMENT OF ERRORS.

> "First: The final decree of this court (the Supreme Court of Louisiana) is based upon the finding, as a fact, by the Supreme Court of Louisiana, that the property upon which the tax has been enjoined was levied was not benefited and could not be benefited by the scheme of drainage provided by the Bayou Terre-aux-Boeufs Drainage District.
>
> "It appears from the record that when the plaintiff in the suit attempted in the trial court to in-

troduce evidence to show that the property, upon which the tax enjoined had been levied, had not been benefited and could not be benefited by the proposed scheme of drainage, the Intervenor and Plaintiff in Error objected to the admission of this evidence, upon the ground that the question was a legislative and not a judicial one, and the legislative department having found that benefits would accrue, that finding, in the absence of a charge of fraud, was conclusive upon the court. This objection was sustained. All evidence as to benefits **vel non** was excluded.

"As the Intervenor and Plaintiff in Error had controverted in his pleadings the allegation of plaintiff's petition to the effect that no benefits had been derived or could be derived by the property the objection to the admission of evidence on that point was in the nature of an exception of no cause of action and admitted the truth of the allegation that no benefits had been derived solely for the purposes of the objection, and did not concede as a fact for any other purpose that no benefits had been derived or would be derived from the system of drainage that had been inaugurated by the Bayou Terre-aux-Boeufs Drainage District.

"Under the law and jurisprudence as it now is and has existed for over a century, the rule of practice is, as applied to this case, when the Supreme Court of Louisiana found that the case must turn upon the question of benefit **vel non** from the drainage system, the court was bound to remand the case in order that evidence might be heard on the question of benefit **vel non**, and the court had no right to conclude that the allegation of the petition to the effect that no benefits had accrued, established itself to such an extent that the court could predicate a final judgment upon this con-

troverted allegation of the petition without any proof in the record to sustain it.

"**Gughelhmi v. Geismar, 46 Ann., 283; State ex rel. Negrotto v. Judges, 45 Ann., 1437; State v. Booth, 28 Ann., 726; Fletcher v. Dauber, 21 Ann., 151; Johnson v. Heckley, 4 La., 285; Wood v. Henderson, 2 Ann., 220; Cross on Pleadings, page 162.**

"**Non constat** that upon trial it would not have been shown, beyond the peradventure of a doubt, that the property, upon which the tax enjoined had been levied, had been improved a hundredfold by the system of drainage. Any way, the right to a trial upon this issue is sacramental, and as the Supreme Court of Louisiana by the final judgment rendered by it has denied the Intervenor and Plaintiff in Error the right to be heard, has deprived him of his day in court upon the issue made the basis of said decision, and, as the right to have the case tried in accordance with the law of the land is sacramental, the final judgment of the Supreme Court of Louisiana is erroneous and deprives Intervenor and Plaintiff in Error of his property without due process of law, in violation of the 14th Amendment to the Federal Constitution.

"That Intervenor and Plaintiff in Error could not anticipate that any such final judgment or decree would be rendered by the Supreme court of Louisiana, which is the highest court in that state, and that he would be deprived of his property without due process of law, and the Supreme Court of Louisiana has denied Intervenor and Plaintiff in Error the right to apply for a rehearing in this cause since the rendition of said final judgment or decree herein.

"Second: That the final judgment rendered herein on rehearing consists entirely of an inter-

pretation of the 14th Amendment to the Constitution of the United States.

"That the Supreme Court of the State of Louisiana has held in this case, where the Bayou Terre-aux-Boeufs Drainage District was created by the Police Jury of the Parish of St Bernard, in the State of Louisiana, in pursuance of the laws and Constitution of the State of Louisiana, and the property upon which the tax in contest has been levied included therein and the Bayou Terre-aux-Boeufs Drainage District thus created has inaugurated a system of drainage for the purpose of draining the lands of that district and levied tax and issued bonds in pursuance of the powers conferred upon it by the Constitution and laws of the State of Louisiana, where the owner of the land in contest has brought a suit, in which there is no allegation of fraud upon the part of the political or legislative department of the State, to have declared null the tax levied for the payment of such bonds upon the sole allegation that his property has not been benefited, and where it was claimed by Intervenor and Plaintiff in Error that, under such circumstances, the judicial department of the State could not correct an honest finding of the political or legislative department by reason of the 14th Amendment of the Constitution of the United States, that the levying and collecion of such tax deprived the Defendant in Error (the original plaintiff) of his property without due process of law. This opinion and decree of the Supreme Court of Louisiana is contrary to and contradictory of the well established jurisprudence of the Supreme Court of the United States, and should be made to conform thereto by reversing said judgment or decree.

"Third: By Article 281 of the Constitution of Louisiana, the bond issue of which intervenor and plaintiff in error is the owner, and the tax to pay said bonds and the interest thereon have been declared incontestable. Such being the case, the Supreme Court of Louisiana, a creature of the Constitution, is without jurisdiction **ratione materiae** to render judgment annulling the tax enjoined and thereby destroying the bonds held by Intervenor and Plaintiff in Error, and, therefore Intervenor and Plaintiff in Error has been deprived of his property without due process of law in violation of the 14th Amendment to the Constitution of the United States" (Tr., pp. 94-96).

ARGUMENT.

This case is but a prelude to a concerted attempt on the part of property owners in the District to repudiate bonds issued by it to an amount in excess of $700,000.00, which have been issued in strict accordance with the provisions of the constitution and laws of Louisiana, and have been distributed broadcast over the country and are now in the hands of innocent third persons, who have, **bona fide**, invested their money on the faith of the authority conferred on the District by the sovereign people of the state of Louisiana, through the constitution of that state.

The amount directly involved in this case is small; but the interests that will be affected are large, because, if the plaintiff succeeds in repudiating the tax imposed on

his land, all other property owners, whose property is of the same character, will imemdiately go into court to invoke the benefit of Plaintiff's victory. Indeed, many similarly situated property owners have already filed suits to repudiate the tax as to them, in the belief that by reason of the principles announced in this case by the Supreme Court of Louisiana, they will be able to successfully combat the collection of the tax, constituting the sole source from which the bond issues can be paid, the proceeds of which have been expended for their benefit for drainage purposes within the District. To the knowledge of the writer, the bonds of the District have been largely distributed to widows and orphans, cemetery associations, trustees and other persons, who would feel the loss very keenly, and who have been induced to invest their money in securities of this class, because by the laws of Louisiana, the investment of the funds of minors and other incapacitated persons has been authorized in bonds of drainage districts, organized under the laws of that state.

The case presents some novel features, and, for that reason, the writer has felt it necessary to make a complete statement of the case, covering the ten years of its development, under the belief that he could best assist the Court by enabling it to understand thoroughly the entire situation at the time of the filing of plaintiff's suit in the court of first instance.

The writer desires to most emphatically announce to your Honors, that he has nothing but the highest veneration and respect for the Supreme Court of Louisiana and each of the judges thereof, and to ask that no statement

made in this brief shall be considered as any reflection upon that court. Any criticism indulged in is to be taken as imputing to the Supreme Court of Louisiana nothing but errors of judgment honestly made, and is not intended, in any sense, as an arraignment or condemnation of that court.

FIRST ERROR.

The sole cause of action propounded by the Plaintiff in his petition was that his property had received and could receive no benefit from the system of drainage being installed by the Board. That allegation was denied in the answers of Intervenor and the Board. On the trial, when evidence was offered to show the absence of benefits, the attorney for Intervenor interposed an objection to the reception of any evidence going to show that the property of Plaintiff had received and would receive no benefit from the drainage system, because the question had been decided by the legislative department of the state, and that department's judgment on the question of benefits was not subject to review by the court unless there was a charge of fraud, or palpable abuse, in connection with the creation of the District. The objection was sustained, and all evidence on the question of benefits **vel non** was excluded. So, the case went up to the Supreme Court of Louisiana, with the lack of benefits alleged by the Plaintiff and denied by the Intervenor and the Board, and without there having been any trial of that issue as a

question of fact—the judgment of the trial court having been based solely on the determination of a legal question, the decision of which, in the trial court, had resulted in the exclusion of all evidence on the only issue before the court.

The objection to the reception of the evidence was in the nature of an exception of no cause of action. When it was interposed by counsel for Intervenor, he, in effect, said: Even if you could prove that Plaintiff's property has received no benefits, and can receive none, the court would, nevertheless, be powerless to give weight to such testimony, because it is concluded from reviewing the finding of benefits by the legislative department, evidenced by the creation and delimitation of the District. For the purposes of the objection, and only for those purposes, the allegations of the petition were admitted. The objection did not admit or establish any fact alleged in the petition. Had the objection been overruled by the trial judge, it would have been incumbent on the Plaintiff to have established the allegations of his petition by proof, which the Board and Intervenor would have been entitled to rebut by any competent evidence, at their command; and, of this right, they could not have been deprived, without denying them a trial, and thereby depriving them of their property without due process of law. The objection was maintained, and the Plaintiff appealed to the Supreme Court of Louisiana.

What power or jurisdiction over the cases did the Supreme Court of Louisiana have under the circumstances? The correct answer is found in the case of **Conery v. Waterworks, 39 Ann., 770**, in the following words:

> "It is the province of the appellate court to review proceedings of the inferior court, and to determine whether its rulings and decrees therein embraced are right or wrong, and not to deal with matters and issues distinctly presented by the pleadings, but not considered or decided by that court. **19 La., 207; 9 R., 256; 7 Ann., 622; 10 Ann., 522; 11 Ann., 746; 15 Ann, 159.**"

There was no trial upon the sole issue of fact—the question, whether the property of Plaintiff was benefited or not. The case was decided upon the objection to the admission of evidence to prove that the property was not benefited, which objection was in the nature of an exception of no cause of action; therefore, the Supreme Court of Louisiana had power or jurisdiction only to review the rulings of the trial court, for the purpose of affirming the judgment, if the rulings on the question of law were found correct; or to remand the case, so that the issue of fact could be disposed of, after a trial, if the court determined that the evidence had been improperly excluded.

On rehearing, the Supreme Court of Louisiana, without any evidence in the record to show that the property would not receive benefits, and without this question of fact ever having been tried or considered by the trial court, calmly proceeded to find, **as a fact**, that plaintiff's property would receive no benefit from the proposed drainage system, and render a final judgment in favor of Plaintiff. The only thing in the record to base the finding of fact on was the **allegata** of Plaintiff's petition, which was denied by intervenor.

There is no case identical with this to be found in the jurisprudence. There is to be found, however, a close

analogue in the jurisprudence of Louisiana dealing with the exception of no cause of action, where courts have rendered judgments in favor of plaintiffs on such exceptions interposed by defendants.

In the case of **State ex rel. Negrotto v. Judges, 45 Ann., p. 1443,** you will find all of these cases reviewed:

> "In **Wood v. Henderson, 2 Ann., 220,** the Court said:
>
> " 'We are of opinion, therefore, that the petition for injunction did exhibit sufficient grounds for relief, and that the exception was properly overruled. **But this did not justify the court below in proceeding further, and rendering, upon the exception, a final judgment in favor of the plaintiff in injunction. Upon the dismissal of the motion, or exception, the defendants in injunction are entitled to file an answer in the cause and put at issue the allegations of the plaintiff's petition.'**
>
> "In **Eulalie v. Long, 9 An., 11,** it was held that an exception that the petition shows no ground of action admits the truth of all the allegations of the petition; but if the exception be overruled, the defendant will have leave to answer over.
>
> "In **DeLaCroix v. Gauns, 13 An., 177,** the court in treating of an exception of no cause of action, said:
>
> " 'The district judge, conceiving that the second exception was well taken, dismissed the suit, and the plaintiff has appealed.'
>
> "In this view this court concurred and remanded the cause to enable the defendant to answer, and for 'further proceedings according to law.' **Vide Lea v. Terry, 20 An., 428.**
>
> "But perhaps there is no stronger or clearer case than that of **Smith v. Donnelly, 27 An., 97,** in

which the court put their opinion in these words, viz:

" 'But we are unable to dispose of the case and render a judgment in favor of the plaintiff as he asks us to do, because no issue has been joined on the demand for the homologation of the award of the amicable compounders, and because the **case was not tried, and no evidence offered on the merits of the demand for judgment** on the notes. **We have no original jurisdiction of these demands.'**

"Keeping in mind the two recognized rules underlying the foregoing decisions, (1) that in case the plea of no cause of action is overruled the defendant is entitled to file an answer and **offer evidence in his behalf,** and (2) that while the plea admits, for the purpose of the trial and decision of same, that the allegations of the plaintiffs' petition are true, yet when the same is overruled by the court it does not become seized of **jurisdiction of the merits** until after answer filed or issue is joined. Consequently, if on appeal from a judgment sustaining a plea of no cause of action is annulled and reversed, the appellate court **cannot deprive the defendant of his right to answer and introduce evidence, nor can it acquire original jurisdiction of the merits.**

"And it is with due respect to the opinion of our learned brothers of the Circuit Court that we submit that their judgment has done both, if it is to be maintained.

"In our opinion the question here presented is not one involving the correctness, regularity or integrity of respondents' judgment as such, but their right to render **any** judgment on the **merits** of the cause for or against either party to the suit, in the condition of the cause then before them.

"There is certainly to be found no support for the position of the respondent in **Jennings v Vickers, 31 An., 679.**

"On reason and authority it seems evident that the proceedings in the respondent's court are wholly void, and same should be annulled and avoided, and respondents should be directed to try the case anew in conformity with the provisions of the law." **45 La. Ann., pp. 1443-1445.**

It is true that the Supreme Court of Louisiana found, **as a fact,** that the lands of Plaintiff have not received and cannot receive any benefit from the drainage; but, as this matter was never considered by the trial court, its doing so was to exercise original jurisdiction in the case, which it was without power to do. Besides, there is nothing in the record to predicate any such finding on, and even if there were color of proof to be found in the mere allegations of Plaintiff's petition, as Intervenor was entitled to a trial, to be heard, and to his day in court, before he could be condemned, such finding would not constitute due process of law.

The facts legitimately found by the Supreme Court of Louisiana are not subject to review by this court; but this does not mean that statements of fact erroneously made and having no foundation in the record, which is before this court, would be accepted by your Honors as concluding intervenor's constitutional right to a trial before a court of competent jurisdiction, according to the regular and established course of judicial proceedings.

Your Honors said, in the case of **Interstate Amusement Co. v. Olbert, 239 U. S.**, 567:

> "It is settled that such findings of fact, in ordinary cases, other than those arising under the 'contract clause' of the Constitution, are binding upon this court. **Waters-Pierce Oil Co. v. Texas, 212 U. S.**, 86, 97; **Rankin v. Emigh, 218 U. S.**, 27, 32; **Miedreich v. Lowenstein, 232 U. S.**, 236. But the rule has its exceptions, as, for instance, where there is ground for the insistence that a Federal right has been denied as the result of the finding that is without support in the evidence. **Southern Pacific Co. v. Schuyler, 226 U. S.**, 601, 611; **N. C. R. R. v. Zachary, 232 U. S.**, 248, 259; **Carlson v. Washington, 234 U. S.**, 103, 106."

In the case of **Carlson v. Curtiss, 234 U. S.**, 106, the Court said:

> "Among the assignment of errors is one contested on the refusal of the Supreme Court to find, as a fact, that the acts, for the performance of which plaintiff in error was held guilty of contempt were done under the direction and authorization of officials of the War Department of the United States, acting in pursuance of and in accordance with the acts of Congress. While in ordinary cases, we are bound by the findings of the state court of last resort respecting matters of fact, it is hardly necessary to say that that court cannot, by omitting to pass upon the basic questions of fact, deprive the litigant of the benefit of a Federal right any more than it could do so by making findings that were wholly without support in the evidence. Just as this court, where its appellate jurisdiction is properly invoked and all evidence is brought before it, will, if necessary for

a decision of the Federal question, examine the entire record, in order to determine whether there is evidence to support the findings of the state court, so it is our duty, in the absence of adequate findings, to examine the evidence, in order to determine what facts might reasonably be found therefrom, and which would furnish a basis for the asserted Federal right. **Southern Pacific R R. v. Schuyler, 227 U. S., 601,** and cases cited."

In the case of **N. C. R. R. v. Zachary, 232 U. S., 258, 259,** the Court said:

"It was, however, further held by the Supreme Court of North Carolina that deceased, at the time he was killed, was not in fact employed by the Southern Railway, the lessee in interstate commerce. There are several grounds upon which this decision was based, or upon which it is said to be supportable, and these will be separately noticed. Of course if upon the findings, any essential matter of fact was in doubt, it should have been submitted to the jury under proper instructions. The rulings of the trial court deprived plaintiff in error of the opportunity to go to the jury upon the question. But it is now insisted that there was no evidence to show that the deceased was engaged in interstate commerce. This renders it incumbent upon us to analyze the evidence to the extent necessary to give to plaintiff in error the benefit of its asserted Federal right. **Southern Pacific R. R. v. Schuyler, 227 U. S., 601,"** and cases cited.

In the case of **Southern Pacific R. R. v. Schuyler, 227 U. S., 601, 611,** the Court said:

"It is insisted (a) that there is no presumption that the Railroad Company violated the prohibi-

tion of the Hepburn act by granting to Schuyler a free interstate ride, and that there is no evidence in the record to support such conclusion; and while it is conceded that ordinarily, upon writ of error to a state court this court does not review the findings of fact, yet it is insisted in this case that a Federal right has ben denied as a result of a finding of fact, which is without support in the evidence; that the evidence is before us in the record by which that insistence may be tested, and that the status of Schuyler as an interstate passenger is a mixed question of law and fact, and that it is incumbent upon us to analyze the evidence to the extent necessary to give to plaintiff in error the benefit of its asserted Federal right. The insistence as to the power and duty of this court in such a case is well founded. **Kansas City S. Ry. Co. v. Albers Com. Co., 223 U. S., 573, 591; Cedar Rapids Gas Co. v. Cedar Rapids, 223 U. S., 665, 668; Creswill v. Knights of Pythias, 225 U. S., 246, 261.**"

In the case of **Creswill v. Knights of Pythias, 225 U. S., 246, 261,** the Court said:

"* * * While it is true that upon a writ of error to a state court we do not review findings of fact, nevertheless two propositions are as well settled as the rule itself, as follows: (a) that where a Federal right has been denied as a result of a finding of fact, which it is contended there was no evidence whatever to support, and the evidence is in the record, the resulting question of law is open for decision; (b) that where a conclusion of law as to a Federal right and finding of fact are so intermingled as to cause it to be essentially necessary for the purpose of passing upon the Federal question to analyze and dissect the facts, to the

extent necessary to do so, the power exists as a necessary incident to a decision upon the claim of denial of a Federal right."

That the decree of the Supreme Court of Louisiana rendered without a trial upon the issue of fact in the trial court, would deprive Intervenor of his property, without due process of law, appears to the writer to be a proposition so plain, as to demonstrate itself—a mere statement thereof being sufficient. It is not probable that the term "due process of law" will ever be completely defined; the gradual process of definition by judicial exclusion and inclusion may go on indefnitely; but the definition had progressed far enough for all the purposes of the question raised by this assignment of error, very early in our jurisprudence—in fact, Mr. Webster's definition in the **Dartmouth College case** is sufficient.

Definition given in the text of **Cyc., Vol., 81, p. 1080:**

> "'Due process of law' in each particular case means such an exertion of the powers of government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs. It has also been defined as: A law which hears before it condemns; which considers upon inquiry, and renders judgment only after trial. Law in its regular course of administration through courts of justice. A prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property. An orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to define, enforce and protect his rights. * * *"

The constitutional question was not raised expressly in the record in the state court prior to the final judgment, and it is inconceivable that it could have been raised. It would not have been respectful to the Supreme Court of Louisiana to have suggested in advance that that court would deprive a litigant of his property without a trial in the court of first instance; and, after it had done so, that court refused to consider an application in which the question was expressly raised, because its rules prohibit more than one application for a rehearing in any case, and the decree in favor of plaintiff was rendered on rehearing. It must be, that every person who submits his rights for adjudication to a judicial tribunal, in so doing, by the strongest sort of implication, claims the privilege guaranteed by the constitution of having those rights determined in accordance with the regular course of justice and the law of the land. When Intervenor presented his petition to the trial court and concluded his prayer with an appeal for "all general and equitable relief," was not that tantamount to a demand for a trial of his case, in accordance with the fixed course of justice in Louisiana—with "due process of law?" Would his position have been in any respect different, if he had engrafted on his petition an express statement that he claimed the right to a trial, a hearing in advance of judgment? Is not every litigant conclusively presumed to claim that right?

The answer to all of these questions is found in the statement of your Honors, so often reiterated that it may now be regarded as a maxim, that this court always looks to substance and not to form. And whenever it was de-

ducible from the record that a right under the federal constitution had been claimed and denied, this court has always maintained its jurisdiction regardless of whether the question had been expressly raised or not.

In the case of **Wilson, et als., v. The Blackbird Creek Marsh Co., 2 Peters, 245, 250,** the Court said:

> "It is sufficient to bring the case within the province of the 25th section of the judicial act, if the record shows that the Constitution or a law or a treaty of the United States must have been misconstrued, or the decision could not be made."

In the case of **Satterlee v Matthewson, 2 Peters, 380, 409,** the Court said:

> "The only question which occurs in this cause, which it is competent for this court to decide is, whether the statute of Pennsylvania, which has been mentioned, of 8th of April, 1826, is or is not objectionable, on the ground of its repugnancy to the Constitution of the United States? But before this inquiry is gone into, it will be proper to dispose of a preliminary objection made to the jurisdiction of this court, upon the ground that there is nothing apparent on this record to raise that question, or otherwise to bring this case within any of the provisions of the 25th section of the judiciary act of 1789.
>
> "Questions of this nature have frequently occurred in this court, and have given occasion for a critical examination of the above section, which has resulted in the adoption of certain principles of construction applicable to it, by which the objection, now to be considered, may, without difficulty, be decided. **2 Wheat., 363; 4 Wheat., 311; 12**

Wheat., 117. One of these principles is, that, if it sufficiently appear from the record itself, that the repugnancy of a statute of a state to the Constitution of the United States was drawn into question, or that that question was applicable to the case, this court has jurisdiction of the cause, under the section of the act referred to; although the record should not, in terms, state a misconstruction of the Constitution of the United States, or that the repugnancy of the statute of the State to any part of that Constitution is drawn into question."

In the case of **Craig v. State of Missouri, 4 Peters, 410, 416,** the Court said:

"To present the question before the court, no plea was necessary; the defense arises under the general issue.

"The record shows that this was a case in the courts of Missouri, in which the constitutionality of a law of that state was brought into question. The cause of action is stated to be promissory notes given for certificates issued under the act of the Legislature of Missouri, establishing loan offices, and the validity of these certificates must have been the whole subject of inquiry in the state courts. Their validity depended solely on the harmony of that act with the Federal compact; and the courts of Missouri could only have affirmed their validity by affirming the act under which they were issued to be constitutional and valid; or, in other terms, not repugnant to the Constitution of the United Sates.

"This is not a new question. It has frequently been presented to this court, and has been uniformly decided according to the views of the plaintiffs in error. **Martin v. Hunter's Lessee, 1 Wheat.,**

355; Miller v. Nicholls, 4 Wheat., 311; Williams v Norris, 12 Wheat., 117. In **Wilson v. The Blackbird Creek Marsh Co., 2 Peters, 251,** the Court said:

"'It is sufficient to bring the case within the 25th section of the judicial act, if the record shows that the Constitution or a law or treaty has been misconstrued, or the decision could not be made.'"

In the case of **Davis v. Packard, 6 Peters, 47, 48,** the Court said:

"It has also been settled that in order to give jurisdiction to this court under the 25th section of the judiciary act, it is not necessary that the record should state in terms that an act of Congress was in point of fact drawn in question. It is sufficient if it appears from the record that an act of Congress was applicable to the case, and was misconstrued, or the decision in the state court was against the privilege or exemption specially set up under such statute. **4 Wheat., 311; 2 Peters, 250; 3 Peters, 301; 4 Peters, 439.** How stands the record then, in this case? Charles A. Davis alleged, that he is Consul General of the King of Saxony in the United States, and that he is thereby privileged from being sued in the state court, according to the Constitution of and laws of the United States. The fact of his being Consul is not denied by the joinder in error. The answer given is, that it nowhere appears by the record, proceedings, or judgment of the Supreme Court, that the said Davis was such Consul; and the Court of Errors, in giving judgment, say, after having examined and fully understood the causes assigned for error, they affirm the judgment of the Supreme Court. This was deciding against the privilege set up under the act of Congress, which declares

that the District Court of the United States shall have jurisdiction, exclusively of the Courts of the several States, of all suits against Consuls and Vice Consuls."

In the case of **Crowell v. Randall, 10 Peters, 391, 397,** after thoroughly reviewing the jurisprudence up to the time of this decision, the Court, said:

"These are all the cases, it is believed, in which the construction of the 25th section of the judiciary act has been made a matter of controversy; and they extend over a period of more than twenty-five years They exhibit a uniformity of interpretation of that section, which has never been broken in upon. They establish, so far as a course of decision can establish, the proposition already stated in the early part of this opinion. The period seems now to have arrived in which the court should, upon a full review of the cases, with a view to close, if possible, all future controversies on the point, reaffirm the interpretation, which they have constantly maintained. It is that to bring a case within the 25th section of the judiciary act, it must appear on the face of the record: 1st. That some one of the questions stated in that section did arise in the state court. 2nd. That the question was decided by the state court, as required in the same section. 3rd. That it is not necessary, that the question should appear on the record to have been raised, and the decision made **ipsissimis verbis;** but that it is sufficient if it appears by clear and necessary intendment, that the question must have been raised and must have been decided in order to have induced the judgment. 4th. That it is not sufficient to show, that a question might have arisen or been applicable to the case, unless it is

> further shown on the record, that it did arise and was applied by the state court to the case."

In the case of **Bridge Proprietors v. Hoboken Co., 1 Wall, 116, 141,** this question was again reviewed by the Court:

> "It is objected, however, by the defendants that the pleadings do not, in words, say that the statute is void, because it conflicts with the Constitution of the United Sates, and do not point out the special clause of the Constitution supposed to render the act invalid.
>
> "It will be a new rule of pleading, and an altogether superfluous one, to require a party to set out specially the provision of the Constitution of the United States, on which he relies for the action of the court in the protection of his righs. If the courts of this country, and especially this court, can be supposed to take judicial notice of anything without pleading it specially, it is the Constitution of the United States. And if the plaintiff and defendant in their pleadings make a case, which necessarily comes within some of the provisions of that instrument, this court surely can recognize the fact without requiring the pleader to say in words: 'This paragraph is the one involved in that case'
>
> "Very few questions have been so often before this court, as those which relate to the circumstances under which it will review the decisions of state courts; and the very objection now raised by defendants has more than once been considered and decided.
>
> "In the case of **Crowell v. Randall (10 Peters, 368)**, the motion to dismiss for want of jurisdiction was argued at much length by Mr. Webster,

Mr. Sargent and Mr. Clayton, whose names are a sufficient guarantee that the matter was well considered. The opinion was delivered by Mr. Justice Story. He reviews all the cases reported up to that time, and lays down these four propositions as necessary to bring a case within the 25th section of the judiciary act:

"'1st. That some of the questions stated in that section did arise in the state court. 2nd. That the question was decided by the state court, as required in the same section. 3rd. That it is not necessary, that the question should appear on the record to have been raised, and the decision made in direct and positive terms, **ipsissimi verbis**; but that it is sufficient if it appears, by clear and necessary intendment, that the question must have been raised and must have been decided, in order to have induced the judgment. 4th. That it is not sufficient to show that the question might have arisen or been applicable to the case, unless it is further shown in the record that it did arise, and was applied by the state court to the case.'

"In the case of **Armstrong v. The Treasurer of Athens County (16 Peters, 281)**, Judge Catron, in delivering the opinion of the court, said that the question of jurisdiction under the 25th section of the act of 1789, had so often arisen and parties had been subject to so much unnecessary expense, that the court thought it fit occasion to state the principle on which it acted in such cases. Referring especially to the manner in which the question on which the jurisdiction must rest shall be made to appear, he lays down six different modes in which that may be done. The first of these is 'either by express averment or necessary intendment in the pleadings in the case.' The sixth is, 'that it must appear from the record that the ques-

tion was necessarily involved in the decision, and the state court could not have given the judgment or decree which they passed without deciding it.'

"Now, although there are other decisions in which it is said that the point raised must appear on the record, and that the particular act of Congress, or part of the Constitution, supposed to be infringed by the state law, ought to be pointed out, it has never been held that this should be done in express words. But the truth and rational rule is, that the court must be able to see clearly, from the whole record, that a certain provision of the Constitution or act of Congress was relied on by the party who brings the writ of error, and that the right thus claimed by him was denied."

There are numerous cases subsequently decided by this court, in which the principles so clearly announced in these early decisions have been affirmed and reaffirmed. They have never been deviated from and are all re-stated, with re-appproval, by Mr. Justice Fuller in the case of **Saymond v. Denny, 158 U. S., 184.** The proposition on which Intervenor relies is the seventh, and is expressed as follows:

"* * * 7. Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved, so that the state court could not have given judgment without deciding it—that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the state court could have been held to have disposed of such Federal question by its decision."

Therefore, it is confidently submitted that this court has jurisdiction to review the federal question presented

in this connection, and to set aside the decision of the Supreme Court of Louisiana, because that court has entertained original jurisdiction of a question of fact, of which there was no trial in the court below, and as to which there was no evidence in the record.

SECOND ERROR.

Plaintiff has made no charge of any fraud in the organization of the District, and could make none, for the grounds, upon which such a charge could be based, do not exist. There is no allegation in his petition that his land does not need drainage, nor that it is not susceptible of being drained. Therefore, then Plaintiff alleges, as his sole and complete cause of action, that his lands lie outside of the levee system, which the Board is building or proposes to build within the District, the irresistible conclusion is that, he means the police jury has erroneously concluded that his land and all lands of like character in the District will be benefited by the drainage system. Conceding, purely **arguendo**, that there is evidence in the record to prove the truth of every allegation made in Plaintiff's petition, or that the allegations, though vigorously denied by the Board and Intervenor, establish themselves, then the question to be considered and decided by your Honors is: Has the Plaintiff the right to have the special acreage tax enjoined and annulled, on account of the honest mistakes and errors in judgment of the police jury—would the enforced collection of the tax

constitute a taking of Plaintiff's property without due process of law?

In attempting to answer the general question, to the satisfaction of the Court, the writer will discuss in their alphabetical order the following:

(a) Has this court the right to review the federal question raised in this connection?

(b) Was the federal question decided correctly by the Supreme Court of Louisiana?

(c) Was the Plaintiff estopped by his laches and conduct from raising the constitutional objection to the special acreage tax, which would cause the **bona fide** holders of the bonds, into which said tax had been funded, to lose their money?

(a)

The constitutional right is distinctly set up by the Plaintiff in his petition, and the opinion of the Supreme Court of Louisiana on rehearing, upon which the final judgment is predicated, consists wholly in an interpretation of the federal constitution. The judgment is in favor of the right claimed, and under section 25 of the judiciary act of 1789, this court would have no jurisdiction to review the decision of the Supreme Court of Louisiana. But, in 1914, sec. 237 of the judicial code, which superseded the judiciary act of 1789, was amended by Act of March 3rd, 1914, approved December 28th, 1914, so as to make sec. 237 of the judicial code read, by addition, as follows:

> "It shall be competent for the Supreme Court to require, by **certiorari** or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court, although the decision in such case may have been in favor of the validity of the treaty or statute or authority exercised under the United States, or may have been against the validity of the state statute or authority claimed to be repugnant to the constitution, treaties or laws of the United States, or in favor of the title, right, privilege or immunity claimed under the constitution, treaty, statute, commission or authority of the United States."

So, it would seem that this court is now vested with jurisdiction to review all cases decided by the state courts, involving rights claimed under the federal constitution, whether the judgment of the court be in favor of or against the right claimed.

When you think of the matter, it is remarkable that the amendment was not embodied in the act originally, for nothing could be more desirable than that there should be uniformity in the construction of the federal constitution, and the only way such uniformity could be secured would be by making this court the final arbiter in all of those cases involving constitutional rights, no matter how the question might be viewed by the state court.

Under the cases quoted **supra**, in considering the first assignment of error, there can be no doubt that the constitutional question, in connection with the second assignment of error, was properly raised in the trial court,

and under sec. 237 of the judicial code, as amended, it is equally clear that this court has jurisdiction.

(b)

In considering this question, the Court should entirely disregard the paragraph of the opinion of the Supreme Court of Louisiana, reading as follows:

> "It is clear that plaintiff's property was included in the Drainage District, not in the exercise of legal discretion, not because the system of drainage would enure to the benefit of the property even indirectly, but for the purpose of deriving revenues, so as to grant a special benefit to other lands subject to be improved by drainage without any benefit to plaintiff or his property, whatever, present or prospective" (Tr.. p 88).

This statement goes entirely beyond any allegation contained in Plaintiff's petition, and has absolutely nothing in the way of admission or proof in the record to sustain it. The conclusion expressed could not possibly be derived from anything in the record, and must have its foundation in some gossip, or hearsay statements coming to the knowledge of the learned judge, who prepared the opinion, from some other source. The Plaintiff made no such allegations, has proved nothing and could, under no circumstances, have been permitted to prove any fact not alleged by him.

The jurisprudence of Louisiana, with respect to special assessments or forced contributions for purposes of public improvements is correctly stated in the original opinion

handed down by the Supreme Court of Louisiana, through Chief Justice Monroe, in this case (Tr., p. 67 **et seq.**). The jurisprudence of Louisian is in strict accord with what the writer believes to be the fixed jurisprudence of this court.

While an application for a rehearing was pending in the Supreme Court of Louisiana, this court decided the case of **Myles Salt Co. v. Iberia Drainage Dist., 239 U. S., p. 478,** and, owing to a complete misapprehension of the opinion of this court in that case, the Supreme Court of Louisiana reversed itself and decided that a simple allegation that an owner's property was not benefited by the improvement was a sufficient reason to annul a tax that had been levied to pay for the improvement, which tax had been funded into bonds and the bonds sold to **bona fide** holders, for their par value. In other words, where all of the forms of law in the organization of a taxing district, under constitutional and legislative authority, have been observed, in good faith, and the property owners and the governing authority of the district, in accordance with law, have authorized the bond issue to pay for a public improvement, approved by them, and it should subsequently develop that the police jury and the governing authority and the property owners were mistaken in their belief that the property would be benefited in exact proportion to the cost of the improvement, then the property owners can repudiate their obligation to pay for the public improvement and shift the loss to innocent third persons, who, on the faith of the constitution and laws of the state, and the representations of the property owners and the governing authority of the district,

had advanced their money, in good faith, to pay the cost of the public improvement.

In the writer's opinion, the **Myles Salt Co. case** does not decide any such thing. It is confidently asserted there is nothing to be found decided in that case contrary to the principles announced in the original opinion in this case by the state court.

The **Myles Salt Co. case** came before this court on an exception of no cause of action, which admitted, for the purposes of the trial of the question of law involved, the truth of all of the allegations of the petition. In the petition, although the use of the harsh word "fraud" was studiously avoided, acts were charged that showed the perpetration of a most palpable fraud, and this court, in handing down its opinion, no doubt through the same considerations of delicacy, abstained from the use of that ill-sounding word. Nevertheless the case involved a question of fraud on the part of the police juries of St. Mary and Iberia parishes in creating the Iberia and St. Mary Drainage District.

When the police juries were charged with having included Weeks' island and the salt deposits therein, and only for the benefit of the other property and not upon the theory that a general scheme of drainage would enure to the benefit of all the property therein, even indirectly, and not through the exercise of sound and legal legislative discretion the island was included within the confines of the district, and that, in pursuance of said scheme and plan, an election was held for the imposition of an **ad valorem** tax of five mills for a period of forty years upon which to predicate an issue of bonds, there could

be no doubt about all of the facts constituting fraud having been directly charged. Words have their only use in the expression of ideas Sometimes, one word will express the same thought as several. Thus, to tell a man he is lying, is the same as to say: he is stating what is false, knowing it to be false. There the thought is expressed one way as readily as the other. So, when all of the ingredients of fraud were charged against the police juries, we have the same case as if the shorter and harsher word had been embodied in the charge.

As all of the allegations of the petition had to be accepted as true by this court, your Honors could not decide otherwise than that the judgment of the state court should be reversed and the case sent back to the trial court to have it determined, as a matter of fact, whether the allegations of the petition were true or not. If, upon the trial of that case in the lower court, it should be proven that Weeks' island had been included within the limits of the Iberia and St. Mary Drainage District, through the exercise of sound and legal legislative discretion, and not solely for the purpose of deriving revenues, but upon the theory that all of the property embraced therein would be benefited by a general scheme of drainage that would eliminate surrounding marshes and a plague of mosquitoes and do away with the unhealthy conditions that had previously made it almost impossible to keep sufficient labor on the island to properly work the mines; that the improvement and population of the lands, formerly marshes, has rendered it an easy matter to get and keep such labor at much less cost than formerly; that the drainage of the marshes has made possible the con-

struction of roads, affording easier access and much cheaper transportation to the mainland: we apprehend that, should the case come back to this court for final determination, your Honors would have no difficulty in maintaining a judgment recognizing the validity and constitutionality of the tax imposed.

A careful consideration of the **Myles Salt Co. case** cannot fail to convince any one that it was not the intention of your Honors to in any way change the rule of property to be found in the long line of decisions handed down by this court in interpreting the "due process of law" clause of the 14th amendment, in its relation to taxation, because in that case, you dealt with only a palpable, arbitrary and fraudulent abuse of the taxing power.

The case of **Norwood v. Baker, 172 U. S., 269,** is directly in line with the **Myles Salt Co. case.**

In that case, the Village of Norwood passed an ordinance, providing for the opening of a new street, through a strip of land, belonging in its entirety, to a single individual, and provided for the assessment against the land of the individual on either side of the new street, the entire value of the land taken and the cost of the condemnation proceedings. This court held, under those circumstances, that the taking was in fact the exercise of the right of eminent domain, and not of the taxing power; and we are unable to see that the principles involved in that case, taken in connection with the language used in the numerous other cases, are, in any respect, applicable to this.

In the instant case, there is no charge of fraud, or arbitrary abuse. The proposition,, therefore, advanced by

the plaintiff is that, where a taxing district is created by the legislative branch of the government, pursuant to the constitution, and there is an exercise of the constitutional power to levy taxes to pay the costs of the construction of a public improvement in the district in a certain manner, and it develops that, in the opinion of the property owner, the benefits contemplated by the constitution are not realized, the property owner has the right to refuse to pay the tax levied to pay the costs of the public improvement and repudiate the bonds, into which the tax has been funded, after the bonds have been acquired, by third persons, **bona fide**, for their full value. This presupposes that the power of taxation, reserved to the legislative branch of the state government, can be subjected to review and control by the judiciary; that the courts have the power, when the legislative department has determined that there will be a certain benefit derived from the public improvement to be installed by all of the property within the limits of the taxing district in a certain proportion or to a certain amount (which involves, in its last analysis, prophesy on the part of the legislative department), to discredit the prophet and substitute for a legislative a judicial guess, in the absence of a charge of fraud or palpable abuse. In other words that, with reference to benefits to be derived, the judicial branch of the government is more competent to prophesy correctly than the legislative branch.

It is difficult to understand upon what theory the belief that a court can forecast the future any better than a legislature is based. In either event, the prophecy or forecast of the future can never be verified until the

future materializes, and we know of nothing upon which to predicate the belief that any person, natural or artificial, political or private, is endowed with power to foretell the future, which is exclusively an attribute of Omniscience. If public parks are laid out, roads built, public buildings constructed and drains installed, owing to lack of population or other causes, there may not be an immediate and direct appreciation of the pecuniary value of the property taxed to pay the costs of these improvements; on the other hand, when sufficient time shall have elapsed for the improved conditions to exert their full influence, the benefit derived may be almost inmeasurable. Therefore, the approval of the principle by the courts that the finding of benefits to accrue, as the result of discretion legitimately exercised on the part of the legislative branch of the government, is not subject to review by the judicial branch, was eminently wise.

It has long been known that it is impossible to exercise the power of taxation in such a way that all will be benefited alike from the imposition of a tax. Always, some individual obtains more direct benefit than others. The most that can be hoped is to attain approximate equality, and in determining the mode or exercise of the power of taxation, it is necessary to consider, not only present conditions, but future hopes; and because, sometimes, the hopes prove to have been fatuous, there is no cause for the escape from the payment of the tax which has been levied.

In the case of **Spencer v. Merchant, 125 U. S., 345-355,** in a most able opinion by Mr. Justice Gray, this question was exhaustively reviewed, and in that opinion the Court said:

"The power to tax belongs exclusively to the legislative branch of the Government. **U. S. v. N. O., 98 U. S., 381, 392; Meriweather v. Garrett, 102 U. S., 472.** In the words of Chief Justice Chase, condensing what had been said long before by Chief Justice Marshall 'the judicial department cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons; but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected.' **Veazie Bank v. Fenno, 8 Wall., 533, 548; McCulloch v. Maryland, 4 Wheat., 316, 428; Providence Bank v. Billings, 4 Peters, 514-563.** See also, **Kirtland v. Hotchkiss, 100 U. S., 491-497.** Whether the estimate of the value of the land for the purpose of taxation exceeds its true value, this court on writ of error to a state court cannot inquire. **Kelly v. Pittsburg, 104 U. S., 78, 80.**

"The legislature, in the exercise of its power of taxation, has the right to direct the whole or a part of the expense of a public improvement, such as the laying out, grading or repairing of a street, to be assessed upon the owners of land benefited thereby; and the determination of the territorial district which should be taxed for local improvement is within the province of legislative discretion. **Willard v. Presbury, 14 Wall., 676; Davidson v. N. O., 96 U. S., 97; Mobile County v. Kimball, 102 U. S., 691, 703, 704; Hagar v. Reclamation Dist., 111 La., 701.** If the legislature provides for notice to and hearing of each proprietor at some stage of the proceedings upon the question of what proportion of the tax shall be assessed upon his land, there is no taking of his property

without due process of law. **McMillan v. Anderson, 95 U. S., 537; Davidson v. N. O., 96 U. S., 97,** and **Hagar v. Reclamation Dist.,** above cited.

"In **Davidson v. N. O.,** it was held that if the work was one which the state had authority to do and to pay for by assessments on the property benefited, objections that the sum raised was exorbitant, **and that part of the property assessed was not benefited, presented no question under the 14th amendment to the Constitution, upon which this court could review the decision of the state court. 96 U. S., 100-106.** In the absence of any more specific special restriction than the general prohibition against taking property without due process of law, the legislature of the state having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed, either, like other taxes, upon property generally benefited or only upon the lands benefited by the improvement is authorized to determine both the amount of the whole tax of the class of lands, which will receive the benefit, and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners.

"When the determination of the lands to be benefited is entrusted to commisioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefited and how much; but the legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement are in fact benefited, and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard

upon the question whether their lands are benefited or not; but only upon the validity of the assessment and its apportionment among the different parcels of the class which the legislature has conclusively determined to be benefited.

"In determining what lands are benefited by the improvement, the legislature may avail itself of such information as it deemed sufficient, either through investigations by its committees or by adopting its own estimates or conclusions of others, whether those estimates or conclusions previously had or had not any legal sanction."

The principles thus clearly enunciated in the case of **Spencer v. Merchant** have been affirmed in every case decided since, and may, without hesitation, be accepted as being too firmly implanted in the jurisprudence of this court to ever be deviated from, and these principles seem to absolutely preclude the idea that failure to realize from a public improvement the benefits honestly determined in advance, or prophesied, by the legislative branch of the government, can ever be held to be good ground for a repudiation of the tax. No doubt was entertained by the legal profession as to the correctness of the principles announced in **Spencer v. Merchant,** until the doubt was raised by the too-general language used in the case of **Norwood v. Baker.** Immediately after the **Norwood-Baker case** was decided, by reason of the doubt created by that decision, a flock of cases, all to be found reported in the **181 U. S.,** involving the validity of special assessments, came sailing into this court.

The first of these cases decided was that of **French v. Barber Asphalt Paving Co., 181 U. S., 324, 344.** In that

case, Mr. Justice Shiras, as the organ of the Court, proceeded to review, at great length, all of the decisions previously rendered, and through him, the Court hastened to qualify the language used by it in deciding the case of **Norwood v. Baker,** thus in effect restricting that case to the principles actually involved therein. The Court said:

> "This array of authority was confronted in the courts below with the decision of this court in the case of **Norwood v. Baker, 172 U. S., 269,** which was claimed to overrule our previous cases and to establish the principle that the cost of the local improvement cannot be assessed against abutting property, according to frontage, unless the law, under which the improvement is made, provides for a preliminary hearing as to the benefits to be derived by the property to be assessed.
>
> "But, we agree with the Supreme Court of Missouri in its view that such is not the necessary legal import of the decision in **Norwood v. Baker.** That was a case whereby a village ordinance apparently aimed at a single person, a portion of whose property was condemned for a street, the entire cost of opening the street, including not only the full amount paid for the strip condemned, but the costs and expenses of the condemnation proceedings was thrown upon the abutting property and the person whose land was condemned. This appeared both to the court below and to a majority of judges of this court to be an abuse of the law, an act of confiscation, and not a valid exercise of the taxing power. This court, however, did not affirm the decree of the trial court, awarding a perpetual injunction against the making and col-

lection of any special assessments upon Mrs. Baker's property, but said:

"'It shall be observed that the decree did not relieve the abutting property from liability for such amount as could be properly assessed against it. Its legal effect, as we now adjudge, was only to prevent the enforcement of the particular assessment in question. It left the village, in its discretion, to take such steps, as were within its power to take either under existing statutes or under any authority that might thereafter be conferred upon it, to make a new assessment upon the Plaintiff's abutting property for so much of the expense of the opening of the street as was found after due and proper inquiry to be equal to the special benefits to the property. By the decree rendered, the court avoided the performance of functions appertaining to an assessing tribunal or body, and left the subject under the control of the local authorities designated by the state.'

"That this decision did not go to the extent claimed by the plaintiff in error is evident, because in the opinion of the majority, it is expressly said that the decision was not inconsistent with our decisions in **Parsons v. District of Columbia, 170 U. S., 45, 56,** and in **Spencer v. Merchant, 125 U. S., 345, 357.**"

The next case to be considered and decided was that of **Wight v. Davidson, 181 U. S., 371, 384,** in which the case of **Norwood v. Baker** was further distinguished from the cases previously decided. In that case, the Court said:

"We need not pursue this suggestion, because we think the Court of Appeal, in regarding the decision of **Norwood v. Baker,** as overruling our pre-

vious decisions, in respect to congressional legislation, in respect to public local improvements in the District of Columbia, misconceived the meaning and effect of that decision. There the question was as to the validity of a village ordinance, which imposed the entire costs and expenses of opening a street, irrespective of the question whether the property was benefited by the opening of the street. The legislature of the state had not defined or designated the abutting property as benefited by the improvement, nor had the village authorities made any inquiry into the question of benefits. There having been no legislative determination as to what lands were benefited, no inquiry instituted by the village councils, and no opportunity afforded to the abutting owner to be heard on the subject, this court held that the exaction from the owner of private property of the cost of the public improvement in excess of the special benefits accruing to him is, to the extent of such cases, a taking, under the guise of taxation, of private property, for public use, without compensation, and accordingly affirmed the decree of the Circuit Court of the United States, which, while preventing the enforcement of the particular assessment in question, left the village free to make a new assessment upon the plaintiff's abutting property for so much of the expense of opening the street, as would be found, upon due and proper inquiry, to be equal to the special benefits accruing to the property. That it was not intended by this decision to overrule **Bauman v. Ross and Parsons v. District of Columbia** is seen in the opinion where both those cases are decided and declared not to be inconsistent with the conclusions reached. **Norwood v. Baker, 172 U. S., 259, 294.**

"Special facts, showing an abuse or disregard of the law, resulting in an actual deprivation of property, may give grounds for applying for relief to a court of equity; and this was thought by a majority of this court to have been the case in **Norwood v. Baker.** But no such facts are disclosed in this record."

The next case was **Tonawanda v. Lyon, 181 U. S., 391,** in which the general language used in **Norwood v. Baker** was further limited, as follows:

"What was claimed was that a State statute which directs municipalities to assess the whole expense of paving any highway therein upon the lands abutting upon the highway so improved in proportion to the feet frontage of such lands, without providing for a judicial inquiry into the value of such lands and the benefits actually to accrue to them by the proposed improvement is unconstitutional and void. And it was held by the court below that, notwithstanding the courts of the state may have held otherwise, it was its duty to follow the decision of this Court in the case of **Norwood v. Baker, 172 U. S., 269,** which was regarded by the court below as establishing the principle contended for, and accordingly the defendants were enjoined from enforcing payment of the assessments. But we think that, in so understanding and applying the decision in **Norwood v. Baker,** the learned judge extended the doctrine of that case beyond its necessary meaning.

"It was not the intention of the court, in that case, to hold that the general and special taxing system of the state, however long existing and sustained as valid by their courts, have been sub-

verted by the 14th amendment of the Constitution of the United States. The purpose of that amendment is to extend to the citizens and residents of the state the same protection against arbitrary state legislation, affecting life, liberty and property, as is afforded by the 5th amendment against similar legislation by Congress. The case of **Norwood v. Baker,** presented, as the judge in the court in the present case said, 'considerations of peculiar and extraordinary hardships,' amounting in the opinion of a majority of the judges of this court, to actual confiscation of private property to public use, and bringing the case fairly within the reach of the 14th amendment.

"The facts disclosed by the present record do not show any abuse of the law, nor that the burdens imposed on the property of the complainant were other than those imposed upon that of other persons in like circumstances; and it is obvious from the expressions in the opinion of the trial judge, that he reached his conclusion, because constrained by what he understood to be the principle established by the **Norwood-Baker case.**"

The case of **Tonawanda v. Lyons** fits the instant case like a glove, because by the state law, under which that case arose, the cost of the public improvement was ordered by the act of the legislature to be distributed among the property owners in fixed proportion according to frontage on the street being paved, without any provision for a preliminary hearing as to the benefit to be derived by such property owners. In this case, the state constitution has ordered the cost of the public improvement to be borne by an acreage tax on the lands, and has

fully safeguarded the right to attack the proceeding in the courts.

The next case to be decided was that of **Webster v. Fargo, 181 U. S., 394, 395.** In that case, the Court said:

> "But we agree with the Supreme Court of North Dakota in holding that it is within the power of the legislature of the state to create special taxing districts, and to charge the cost of a local improvement, in whole or in part, upon the property in said districts, either according to valuation, or superficial area, or frontage, and that it was not the intention of this court in **Norwood v. Baker,** to hold otherwise."

In the following cases, in the same volume of the United States Court reports, the cases just quoted were all approved, and made the basis of the respective opinions:

Cass Farms Co. v. Detroit, 396; Detroit v. Parker, 399; Wormley v. District of Columbia, Allen v. District of Columbia, 402; Shumate v. Heman, 402; Farrell v. Chicago Park Commissioners, 404.

In the case of **Hibben v. Smith, 191 U. S., 325-326,** the Court said:

> "The provisions of the **14th Amendment** do not cover such an objection as is now under consideration. The general system of procedure for the levying and collection of taxes, which is established in this country is, within the meaning of the Constitution, due process of law. **Kelly v. Pittsburgh, 104 U. S., 78.** A provision made by the legislature of a state, in relation to the manner of levying an assessment for a local improvement,

is within this principle a proceeding for the levying and collection of taxes, and unless it be in violation of some particular provision of the Federal Constitution, it will be upheld in this court. The 14th amendment, it has been held, legitimately operates to extend to the citizens and residents of the state the same protection against arbitrary state legislation, affecting life, liberty and property, as is offered by the 5th amendment against similar legislation by Congress; but that the Federal courts ought not to interfere when what is complained of amounts to the enforcement of the laws of a state applicable to all persons in like circumstances and conditions, and that the Federal Courts should not interfere, unless there is some abuse of law amounting to confiscation of property or a deprivation of personal rights, such as existed in the case of **Norwood v. Baker, 172 U. S., 269.**

"These principles have been reiterated in a series of cases, reported in the **181 U. S.**, commencing with **French v. Barber Asphalt Paving Co.,** at page 324 of that volume."

In the case of **L. & N. R. R. v. Barber Asphalt Paving Co., 197 U. S., 430, 433,** Mr. Justice Holmes, as the organ of the Court, said:

"The argument for the plaintiff in error oscillates somewhat between the objections to the suit and the most specific grounds for contending that it cannot be applied constitutionally to the present case. So far as the former are concerned, they are disposed of by the decisions of this court, There is a lack of logic when it is said that special assessments are founded on special benefits, and that a law which makes it possible to assess be-

yond the amount of special benefit attempts to rise above its source. But that mode of argument assumes the exactness in the premises which does not exist. The foundation of this familiar form of taxation is a question of theory. The amount of benefit which an improvement will confer upon particular land—indeed, whether it is a benefit at all—is a matter of forecast and estimate. In its general aspects, at least, it is peculiarly a thing to be decided by those who make the law. The result of the constitutional principle is simply to shift the burden to a somewhat large taxing district—the municipality—and to disguise, rather than to answer, the theoretic doubt. It is dangerous to tie down legislatures too closely by judicial constructions not necessarily arising from the words of the Constitution. Particularly, as was intimated in **Spencer v. Merchant, 125 U. S., 345,** it is important for this court to avoid extracting from the very general language of the 14th amendment a system of delusive exactness in order to destroy methods of taxation which were well known when that amendment was adopted, and which it is safe to say that no one then supposed would be disturbed. It now is established beyond permissible controversy that laws like the one before us are not contrary to the Constitution of the United States. **Walston v. Nevin, 128 U. S., 578; French v. Barber Asphalt Paving Co., 181 U. S., 324; Webster v. Fargo, 181 U. S., 394; Cass Farm Co. v. Detroit, 181 U. S., 396; Detroit v. Parker, 181 U. S., 399; Chadwick v. Kelly, 187 U. S., 540; Schaefer v. Werling, 188 U. S., 516; Seattle v. Kelleher, 195 U. S., 351, 358.**

"A statute like the present manifestly might lead to the assessment of a particular lot for a sum

larger than the value of the benefits to that lot. The whole cost of the improvement is distributed in proportion to area, and a particular area might receive no benefits at all, at least, if its present and probable use be taken into account. If that possibility does not invalidate the act, it would be surprising if the corresponding fact should invalidate an assessment. Upholding the act as embodying a principle generally fair and doing as nearly equal justice as can be expected, seems to import that if a particular case of harship rises under it, in its natural and ordinary application, that hardship must be borne as one of the imperfections of human things.

"And this has been the implication of the cases. **Davidson v. N. O., 96 U. S., 97, 106; Mattingly v. District of Columbia, 97 U. S., 687; Parsons v. District of Columbia, 170 U. S., 45, 52, 55; Detroit v. Parker, 181 U. S., 399, 400; Chadwick v. Kelly, 187 U. S., 540, 544.**"

In the case of **Wagner v. Baltimore, 239 U. S., 207, 219,** after affirming the principles announced in **Spencer v. Merchant**, and citing, with approval, all of the cases decided from that time on, the Court said:

"**Norwood v. Baker, supra,** is much relied upon by the plaintiff in error, and while this court has shown no disposition to overrule that case when limited to the decision actually made by the court, much that is said in it must be read in connection with the subsequent cases in this court already referred to. In **Norwood v. Baker,** a portion of a person's property located in a village of Ohio, was condemned for street purposes, and the entire cost of opening the street, including the amount paid

for the strip condemned, with the costs and expenses of condemnation, was assessed upon the abutting property owner whose land was condemned. This, it was said in **French v. Barber Asphalt Paving Co., supra,** was an abuse of the law and an act of confiscation, and not a valid exercise of the taxing power. Taking the decisions in this court together, we think it results that the legislature of a state may determine the amount to be assessed for a given improvement, and designate the lands and property benefited thereby, upon which the assessment is to be made, without first giving an opportunity to the owners of the property to be assessed to be heard upon the amount of the assessment or the extent of the benefit conferred."

In the case of **Houck v. Little River Drainage Dist.,** the power of the States to create special taxing districts to defray the cost of public improvements is extensively reviewed, and **Spencer v. Merchant** and subsequent cases emphatically affirmed. The Court said:

"The ultimate contention, then, is that the plaintiffs in error cannot be subjected to this preliminary tax of 25 cents an acre, because their lands, as they insist, will not be benefited by the plan of drainage. In authorizing the tax, it is said, the legislature has departed from the principle of benefits, and the tax is asserted to be **pro tanto** an uncompensated taking of their property for public use. But the power of taxation should not be confused with the power of eminent domain. Each is governed by its own principles. **Mobile County v. Kimball, supra, Bauman v. Ross, 167 U. S., 548, 590; Wight v. Davidson, 181 U. S., 371,**

379, People, ex rel., Griffen v. Brooklyn, 4 N. Y., 419; Cooley on Taxation, p. 430; Lewis on Eminent Domain, 3rd. Ed., 4, 5. A tax is an enforced contribution for the payment of public expenses. It is laid by some rule of apportionment according to which the persons or property taxed share the public burden, and whether taxation operates upon all within the State, or upon those of a given class or locality, its essential nature is the same. The power of segregation for taxing purposes has everyday illustration in the experiences of local communities, the members of which, by reason of their membership, or the owners of property within the bounds of the political subdivision, are compelled to bear the burdens both of the successes and of the failures of local administration. When local improvements may be deemed to result in special benefits, a further classification may be made and special assessments imposed accordingly; but even in such case there is no requirement of the Federal Constitution that for every payment there must be an equal benefit. The state, in its discretion, may lay such assessment in proportion to position, frontage, area, market value, or to benefits estimated by commissioners."

The **Myles Salt Co.** case is, in no respect, opposed to this army of cases, iterating and reiterating the principles laid down in **Spencer v. Merchant**, as is shown by the closing paragraph of the opinion in the former case:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property, which is not and cannot be benefited directly or indirectly, including it only that

> it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. **Wagner v. Baltimore, Ante, page 207.** We are not dealing with motives alone, but as well as with their resultant action; we are not dealing with disputable grounds of discussion or disputable degrees of benefits, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore arbitrarily exerted imposing a burden without a compensating advantage of any kind."

And it is submitted that the **Myles Salt Co. case** can no more be considered as an authority for the decision of the Supreme Court of Louisiana, in this case, than it could be held to overrule all of the cases quoted and referred to in this brief from the case of **Davidson v. City of N. O.**, in the **96 U. S.**, down to the case of **Houck v. Little River Drainage Dist.**, in the **239 U. S.**

What could a judgment, rendered in a case where the property charged with the tax was included solely for the purpose of deriving revenue to improve the property of others, have to do with this case, where a drainage district has been honestly organized, in strict accordance with the constitution and laws of Louisiana, where a tax has been voted by the property owners in accordance with such constitution and laws, where a tax has been levied and the bonds sold, and years afterwards the allegation is made that no benefit has been derived or will be derived from the public improvement, as a cause for refusing to pay the tax?

In Louisiana, the method of taxation pursued in the instant case was firmly imbedded in the jurisprudence of Louisiana long prior to the adoption of the 14th amendment, as appears from the case of **Yeatman v. Crandall, 11 Ann., 220**, which was decided in 1856, and the cases therein cited.

The case of **Davidson v. N. O., 96 U. S., p. 72**, was a Louisiana case, and the principles announced in that case had never been deviated from by the Supreme Court of Louisiana, until the final judgment handed down by that court in the instant case, under a total misconception, as the writer firmly believes, of what was actually decided by this court in the **Myles Salt Co. case**. How unreservedly the principles laid down in the case of **Davidson v. N. O.**, were accepted by the Supreme Court is shown by the opinion in the case of **George, et al. v. Sheriff and Tax Collector**, reported in the **45 An., 1233**:

> "The plaintiffs and appellees are owners of lands situated within the limits of the 'Caddo Levee District'; that district embraces all that portion of the land subject to overflow in the Parish of Caddo, within stated boundaries. The provisions of the act creating the district are similar to the other legislative acts creating levee districts for the protection of lands and property from destruction or damage by flood.
>
> "Lands and other property in the district are subject to taxation, local assessment and forced contribution, to raise fund for the purpose of the act.
>
> "The plaintiffs claim exemption from the levee taxes sought to be collected under the terms of the act, and assign for reason that their lands are left

out and are not protected by levees; that they receive no possible benefit, but positive injury, and that any tax, contribution or assessment imposed and levied are illegal and not within the powers of the levee commissioners.

"They interpose objection to the assessment imposed under section 6 of the act, and to the special assessment under section 7.

"The evidence shows that the levees at this time afford no protection to plaintiff's lands; that they are between the levee and the natural banks of the river; that they derive no benefit from the location and construction of the levees, but on the contrary are damaged; that they are more exposed to overflow than prior to the construction of the levee built by the state, being part of the system of state levees in the Parish of Caddo as located by state engineers. Adjudications upon the subject of local taxation for local improvement has been frequent. As early as the case of **Yeatman v. Crandall, 11 An., 220,** not the first adjudication upon the subject, it was decided that the legislature might lawfully erect any portion of the state it saw fit into a district for special local improvement and assess the cost exclusively upon the district. One of the justices in that case yielded his opinion expressed in several dissents and concurred with the court in holding that the article in question and similar articles under the constitution preceding, were not intended to apply to municipal or local taxation for improvements. In the present decade also a number of adjudications have been made. In the last decided case there was an additional ground which is stated as follows:

" 'That the particular land of the plaintiff is subject to overflow, and is not protected by the

levees built or proposed to be built; that it requires no such protection and can derive no possible benefit or advantage from the levees, and that, therefore, the assessments are a taxing of private property for public purposes without compensation.'

"Passing upon the question, the court says that it is only where the assessment is manifestly unjust and oppressive that a court would be justified in overruling the legislative judgment. The legislature necessarily has a large discretion on this subject. In carrying out this scheme of leveeing it has defined the limits by following certain lines of lands subject to overflow. It was not possible in defining these limits to consult personal interests or to except those lands not susceptible of receiving immediate benefit. These acts creating levee districts embrace entire areas; if exceptions were made it would probably defeat the purpose in adopting the law. Approximate or even remote equality would be an impossibility. Certain lands must, in the nature of things, receive much greater benefit than others. The exemption of certain lands from the operation of the law would defeat the legislative intent. Judicial interposition becomes delicate and exceedingly difficult. To interpose, it must be made manifest that the property is permanently and intentionally excluded from all possible benefits. We quote from **Cooley on Constitutional Limitations, p. 509:**

" 'In many other cases, besides, the construction, improvement and repair of streets may, in special taxing districts, be created with a view to local improvements. The cases of drains to relieve swamps, marshes and other lowlands of their stagnant water, and of levees to prevent being over-

flowed by rivers, will at once suggest themselves. In providing for such cases, however, the legislature exercises another power besides the power of taxation. On the theory that the drainage is for the sole purpose of benefiting the lands of individuals, it might be difficult to defend such legislation. But if the stagnant water comes to threaten disease it may be a nuisance, which, under its power of police, the State would have authority to abate.'

"The lands are included within the limits of the district." **45 Ann., 1233-1235.**

In the case of **Degravelle v. Iberia & St. Mary Drainage District, 104 La., 707,** the whole question was again reviewed by the Supreme Court of Louisiana, and while the property of the plaintiff in that case could receive no direct benefit from the proposed drainage system, because it was already drained and the waters that fell upon it flowed into the Bayou Teche by gravity and would never enter the drainage system which it was proposed to install, nevertheless it was held liable for the **ad valorem** tax levied throughout the drainage district to pay for the drainage system.

"In his petition he admitted that his property was situated within the limits of the drainage district, but he averred that from its situation and condition it and all other property situated between Bayou Teche and the public road leading from Franklin to New Iberia was not in any wise benefited by the drainage system and work undertaken and contemplated by the board of commissioners, and that hence the tax, even if legal, in other respects was illegal, null and void, as to his

property, and an unauthorized attempted exercise of the taxing power by the commissioners, and the bonds, if issued, would operate as an incumbrance and burden upon petitioner's property, thereby causing him irreparable injury. Plaintiff does not call in question the right of the general assembly or the police juries of the parishes of Iberia and St. Mary to legally have created within the declared limits and boundaries the Iberia and St. Mary Drainage District. His contention is that, notwithstanding his property is situated within the district, it is not subject to taxation. His prayer, if granted, would leave his property within the district for the purpose of the works of the drainage board, and yet take it substantially out of the taxing district. We do not understand the plaintiff to contend that the judiciary has the power or authority to alter the limits and boundaries of the district. Drainage districts are established, either by the direct authority of the general assembly or by delegated authority to different political subdivisions of the State. The body exercising this authority determines over what territory the benefits are so far diffused as to render it proper for all lands to contribute to the cost of the drainage work. The whole subject of the determination of taxing drainage districts belongs to the legislature. When the fixing of the district is left for decision to a local board or body, it, for that purpose, exercises legislative power, and its action is as conclusive as if taken by the legislature itself. It has been repeatedly decided that the legislative acts assigning districts for special taxation for benefits cannot be attacked on the ground of error in judgment regarding the special benefits, and defeated by satisfying a court that no special or par-

ticular benefits are received; that if the legislature has fixed the district, and laid the tax for the reason that in the opinion of the legislative body such district is peculiarly benefited, that is conclusive; that judicial judgment or opinion on that subject is not to be substituted for legislative judgment or opinion **(Cooley, Tax'n., p. 459)**; that the question is legislative, and conclusions reached on the subject being within the scope of legal power are not unlawful, because, like all legislative questions, the question may have been in some instance or to some extent decided erroneously (Id., pp. 448-450). Cooley, on page 450 of his work, declares that the only exceptions which have been recognized to this rule are those cases in which, under pretense of apportionment, a work of general benefit has been treated as a work of merely local consequence, and the cost imposed on some local community, in disregard of the general rules which control legislation in matters of taxation. On page 179 the author further says that: 'Whatever is the rule established by legislation, it is presumptively as just and equal, in the opinion of the legislature, as the circumstances would permit. It is not to be questioned for impolicy, and cannot be overthrown by showing that in particular instances it operates unjustly.' In **Lockwood v. City of St. Louis, 24 Mo., 20**, it was said that 'it was one peculiarly of assessments that the measure of supposed benefits might be whatever appeared to the legislature most just under the circumstances.'

"The question submitted to us is not a new one in Louisiana. It has been repeatedly submitted and answered in the matter of local taxes for levee purposes, the decisions being adverse to the contention made by the appellant. Some of these de-

cisions are referred to in **Hill v. Sheriff, 46 La. Ann., 1566,** and **George v. Sheriff, 45 La Ann., 1232. Cooley,** on **page 423,** says: 'The district in this particular instance is a drainage district. The expense of constructing drains in order to relieve swamps, marshes and other low lands of their stagnant water is usually provided for by special assessments. The grounds on which this is done are not always very clearly indicated in the statutes. Sometimes the ground indicated is that the drainage is important to the public health, and in such cases the right to levy assessments for the purpose cannot plausibly be disputed. The special benefits from the enhancement of values must accrue mainly to the owner of the lands drained, who ought, therefore bear the expense. But the authority to levy assessments for draining lands upon no other consideration than such as pertain to the improvement of the land as property must, it would seem, be confined within limited bounds. It has been said that a tax cannot be levied upon any portion of the public for the construction of a drain in which the public are not concerned. Even the owner of the land benefited cannot be taxed to improve it unless public considerations are involved, but he must be left to improve it or not, as he may choose. But where any considerable tract of land owned by different persons is in a condition precluding cultivation by reason of excessive moisture, which drains would relieve, it may be well said that the public have such an interest in the improvement and the consequent advancement of the general interest of the locality as will justify the levy of assessments upon the owners for drainage purposes. Such a case would seem to stand upon the same solid ground with assessments for levee purposes, which have for their object to protect

lands from falling into a like condition themselves.' We think it unquestionable that the drainage district in this instance was created in the interest of the locality. The tax levied could not be set aside as a whole, even if particular properties could, from some particular cause, escape payment of the same. The claim that plaintiff's particular property is not benefited by the proposed drainage work is not supported by the evidence, and therefore we need not discuss whether it would be specially exempted from taxation if it was in fact not benefited. We find it admitted that 'the rain water which falls upon the property described in plaintiff's petition flows into the Bayou Teche; that the front portion or that portion fronting upon the public road, is higher than that portion which fronts upon the bayou;' that 'in the construction of this canal all of this water which falls upon this property could be drained into the canal;' that 'when the drainage of the district is completed by the Board of Commissioners of the Iberia and St. Mary Drainage District, it will drain and bring into cultivation something near twenty-five thousand acres of land, which otherwise is unfit for cultivation, being covered by water the larger portion of the year, especially in the rainy seasons, and drying out in the very dry seasons; that these lands, when drained, will be as productive as any situated in the district; and that it is the consensus of opinion of the inhabitants of said drainage district that when said property is drained, and the drainage system is completed, all lands situated within the limits of the said drainage district will be increased in value commercially.' It was further admitted 'that it is the opinion that the drainage of these low lands as above referred to will materially benefit the health of the inhabitants of the entire drainage

district; that, after the drainage is completed, the sugar refineries situated in said district will then be able to pump the refuse from their refineries into the canal, which will connect directly with the Gulf of Mexico, and thereby the waters of the Teche will be purified, and made wholesome; that with the present system of pumping of refuse into the Bayou Teche, the water of said bayou during the rolling season becomes very offensive, emanating a stench that is not only very disagreeable, but is a menace to the health of the community, and interferes with commerce in the bayou; that the polluting of said water with refuse is a crime under the United States statutes, and that the proprietors of certain refineries have been indicted and arrested therefor; and that it is a serious problem in some cases to dispose of said refuse.' " **104 La., 708-711.**

In the case of **Bernard v. Bayou Portage Drainage Dist., 130 La., 637,** the constitutionality of our drainage laws was again upheld.

In the case of **Myles Salt Co. v. Iberia & St. Mary Drainage Dist., 134 La., 903,** the Court reaffirmed the principles approved in the **Degravelle case,** and held that:

> "A property owner, whose property has been included within a drainage district, cannot, without alleging fraud in the formation of the district, maintain a suit to have the tax set aside on the mere allegation that his property will not be benefited by the expenditure of the drainage district tax fund, to which he is made to contribute."

It is obvious that the general principles announced as governing such cases were correctly appreciated by the

Supreme Court of Louisiana, and the error committed by that court in deciding the last mentioned case was due, as we believe, to the fact of the court's overlooking the fact that a fraud was substantially charged in the creation of the taxing district.

The original opinion in this case is a correct exposition of the jurisprudence of Louisiana as it may be said to exist to-day, for the final opinion of the Supreme Court of Louisiana herein is alone opposed to it, and the Supreme Court of that State has held, most emphatically, that one decision does not make **stare decisis.**

In the case of **Quaker Realty Co., Ltd., v. Labasse, 131 La., 1007,** the court said:

> "As thus broadly stated, the doctrine is counter to the decisions in the **Duplantier** and **Negrotto cases, supra,** and cannot be justified, and must therefore be to that extent recalled or modified, and in that connection it must be remembered that only seldom can a single decision serve as a basis for **stare decisis,** and never where opposed to previous decisions, and especially where such previous decisions are overruled without being referred to, as if having escaped altogether the attention of the court.
>
> " 'A single decision is not necessarily binding.' **11 Cyc., 745.** 'More than one decison,' said Judge Martin in **Smith v. Smith, 13 La., 441,** 'is required to settle the jurisprudence on any given point or question of law.' 'We have often said,' said the court in **Lagrange v. Barre, 11 Rob., 302,** 'it requires more than one decision to establish a jurisprudence.'

"And in **Griffin v. His Creditors, 6 Rob., 216-224:**

" 'The rule of **stare decisis** is entitled to great weight and respect when there has been, on a point of law, a series of adjudications all to the same effect; but when we are presented with a single decision, which we believe to have been inadvisedly made, it is incumbent on us to overrule it, if we entertain a different opinion on the question submitted.'

"From **26 A. & E. E. of La., 167 and 168,** we quote as follows:

" 'Distinction has also been drawn in the application of the doctrine of **stare decisis** where only one decision is relied upon as establishing the doctrine. For a variety of reasons, a series of decisions will be given more weight than a single decision. There is less likelihood of error; any points, decisions or statutes overlooked in the one may be considered in subsequent cases; the probability of an injurious effect on property rights is less where there is a single decision than where there is a series.

" 'When a question involving important public or private rights extending through all coming time has been passed upon a single occasion, and the decision can in no just sense be said to have been acquiesced in, it is not only the right, but the duty, of the courts, when properly called upon, to reexamine the questions involved and again subject them to judicial scrutiny. Nor is the doctrine applied to prevent the revising or overruling of a single decision upon a disputed or doubtful point, or of one in which the point in controversy does not appear to have been thoroughly investigated, or to a decision creating a rule of law for a case which has not been subsequently applied to other cases, or to a single judgment followed in no other

case, rendered by a bare majority of the court, and construing the statute in a manner which is palpably erroneous and contrary to public policy as tending to foster and promote a monopoly, or where the decision was made without notice of the statute, and, in effect, sets the statute aside.

"'It is to be considered in determining the weight to be given to a single decision, whether or not it is a reversal or overruling of any prior case. A case simply establishing a point, without in any way interfering with or contradicting any previous case, would have more weight, of course, than one which was in conflict with previous decisions or dicta. So where the points involved were decided in opposition to well-established decisions which should have governed, and injustice or hardship will result from adhering to the decision, the courts will not apply the rule of **stare decisis.** Or where there has been an erroneous decision in one case, and the doctrine of all the cases which have preceded and followed it is contrary in reference to the matters decided, to the doctrine of that case, it will not be upheld as **stare decisis,** although it may never have been expressly overruled.'" **131 La., 1007-1009.**

It may be suggested to the Court that the Supreme Court of Louisiana deviated from the principles approved in the Louisiana cases quoted and cited **supra,** in the case of **Williams v. Board of Com's of Bayou Sale Drainage Dist., 130 La., 969;** but that case is entirely different, and involves principally the question as to whether or not, where a tax was voted throughout the district for drainage purposes, it could be applied wholly to the drainage of sub-districts comprising about one-fifth of the total

area of the district. And the Supreme Court very properly held that as all of the land in the district was of the same character and the total amount to be realized from the bond issue was barely sufficient to drain subdivisions 1 and 2, the work to be done in those subdivisions alone, which was to be paid for by the whole district, would not benefit the land lying outside of those sub-districts, and the tax could not be enforced. Furthermore, in that case, the court was not dealing with an executed power, because the bonds had not been sold and no vested rights had been acquired by third persons. There is nothing in that case contrary to either the jurisprudence of this court or that of the Supreme Court of Louisiana.

Therefore, we submit that the Supreme Court of Louisiana clearly erred, when it held that, because, in the opinion of the Plaintiff, the property owners and governing authority of the district, the Board, made an honest mistake in prophesying or forecasting the future with respect to benefits to be derived by the District from the drainage system to be installed by the Board, the acreage taxes levied and funded into bond issues, which were sold to **bona fide** holders for their par value, could be annulled and repudiated.

(c)

It appears to the writer to have been heretofore demonstrated that as the total tax of 6 cents per acre was capitalized into bonds of the District, which are payable alone from that tax, an attack on the tax is equivalent to an attack on the bonds. As these bonds are now in the hands

of **bona fide** holders, and as Intervenor is the owner of a part of this bond issue and is resisting the demands of the Plaintiff, it would seem that for Plaintiff to succeed in annulling the tax and thereby repudiating the bonds, it would be incumbent on him to show some fraud or nullity patent on the face of the bonds or lack of power in the Board to issue them. No fraud is charged, and there can be no question about the authority or power of the Board to issue the bonds after having been authorized to do so by a vote of a majority in amount of the property taxpayers of the District voting at an election.

This Court has repeatedly held that in dealing with the validity **vel non** of negotiable bonds, it would be governed by the laws applying to negotiable instruments, and would not consider as binding on it the decisions of the different state courts; and that in determining whether an issue of negotiable bonds was valid or not, where they were in the hands of **bona fide** owners, it would only look to the power of the municipality to issue the bonds at all, and would not concern itself with any relative or non-apparent nullities that did not appear from an inspection of the bonds themselves.

This court has also decided repeatedly that the right to enforce or protect a constitutional right in a court of equity may be lost by laches, the same as other rights.

The question to be considered in this connection, is, under the circumstances hereinbefore set forth, the corporation (and by corporation is meant not only the Board, but also the owners of property subject to taxation in the District), estopped from repudiating the negotiable bonds, payable to bearer, in the hands of innocent **bona fide** holders for value?

As we have seen, the Board had the power, under art. 281 of the state constitution, Act 145 of 1902 and Act 256 of 1910, when authorized by a majority in number and amount of the taxpayers residing within the drainage district to levy an acreage tax, not exceeding fifty cents an acre, on all lands in [illegible]istrict, and to issue negotiable bonds, payable [illegible]said tax. Therefore, there could not possibly be any question as to the jurisdiction of the Board to issue the bonds now held by the Intervenor, a **bona fide,** innocent holder for value.

> "Where there was in the first instance authority to issue the bonds, a municipal corporation, by levying taxes and paying the interest thereon for a series of years, is thereby estopped from denying their validity by reason of any irregularities in their issue, such as a defect in the election or notices thereof, an irregular or defective consent of the council, a defective execution of the bonds with respect to the date and signature or in the description of the payee, an irregularity in the delivery or registration of the bonds."
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> **Ency. of U. S. Supreme Court Reports, Vol. 8, pp. 738, 739, 740.**

> "The acts of a municipality which estop it from denying the validity of its bonds in a suit by a **bona fide** holder of the same and the acquiescence of the taxpayers therein, conclude such taxpayer from contesting the validity of the bonds."
>
> **Ib., p. 741.**

The bonds held by Intervenor are payable to bearer, and recite on their face the article of the constitution and the law under which they were issued, and have endorsed on them the certificate of the Secretary of State,

under the Great Seal of Louisiana, certifying that they are payable from the proceeds of a tax.

The case of **County of Ray v. Van Sycle, 96 U. S., p. 675,** was an action to recover the amount due on interest coupons attached to bonds, which were issued in 1869, in the name of County of Ray, Mo. Van Sycle was a lawful holder for value of the bonds and received them without actual notice or knowledge of any defects or irregularities in the issue. The defense made was that the County Court was without authority to issue the bonds. The Court said:

> "But whatever doubt exists upon this point should be resolved in favor of the **bona fide** holders of the bonds. The taxpayers of the county should not, under the peculiar circumstances of this case, be now heard to allege that their agents invested by statute with the authority and charged with the duty of protecting their interests, had exceeded these powers. The court levied and collected a tax to pay interest due on the bonds delivered to the St. Louis & St. Joseph Railroad Company for the years 1869, 1870, 1871, 1872 and 1873. The coupons were annually paid for the first four years."
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> **County of Ray v. Van Sycle, 96 U. S., p. 687.**

In the case of **Pompton v. Cooper Union, 101 U. S., 203,** the Court said:

> "If any error or wrong was committed in issuing these bonds, it was the act of the agents of the plaintiffs in error.
>
> "Where one of two innocent persons must suffer a loss, and one of them has contributed to produce it, the law throws the burden upon him and not

upon the other party." **Hearn v. Nichols, 1 Salk., 289; Merchants Bank v. State Bank, 10 Wall., 604.**

"The bonds in question recite on their face that they were issued in pursuance of an act of the Legislature of New Jersey, approved April 9th, 1868, entitled 'An Act to Authorize Certain Townships, Towns and Cities to Issue Bonds and Take the Bonds of the Mont Clair Railway Company.'

"In **Orleans v. Platt (99 U. S., 676)**, this court said: 'The bonds in question have all the properties of commercial paper, and in view of the law, they belong to that category. **Murray v. Lardner, 2 Wall, 210.** This court has uniformly held, when the question has been presented, that where a corporation has lawful power to issue such securities, and does so, the **bone fide** holder has a right to presume the power was properly exercised and is not bound to look beyond the question of its existence. Where the bonds on their face recite the circumstances which bring them within the power, the corporation is estopped to deny the truth of the recital. **Mercer County v. Hacket, 1 Id., 183; San Antonio v. Mehuffy, 96 U. S., 312; County of Moultrie v. Savings Bank, 92 id., 631; Moran v. Commissioners of Miami County, 2 Black, 722; Knox v. Aspinwall, 21 How., 539; The Royal British Bank v. Turguand, 6 El. & Bl., 325.'**

"These rules are the settled law of this court." **Pompton v. Cooper Union, 101 U. S., 203, 204.**

In the case of **Knox County v. Aspinwall, 21 How., 539,** the facts of the case were, as follows:

The Commissioners of Knox County were required to subscribe to the stock of the Ohio and Mississippi Railroad Company, if a majority of the qualified voters of said county, at any annual election, within five

years after the books of said railroad company were opened, voted for the same. The following year, the commissioners were required to give notice of an election to be held on the first Monday of March of that year. The board of commissioners on February 26th, 1849, preceding the date of the election, subscribed to $20,000.00 of the stock of the railroad, and, also, at a meeting on the 25th of October, 1850, after reciting that, in accordance with the wishes of the county, as expressed at the election held for that purpose, in the several townships on the first Monday of March, 1849, executed and delivered the bonds of the county, as provided for in the law authorizing the subscription to the stock of the railroad, with coupons for the interest attached. Payment of the interest coupons was resisted on the ground of want of authority to issue the bonds, because of the alleged omission to give the required notice of the election, at which a vote was to be taken for or against a subscription of stock to the railroad company. In that case, the Court said:

> "The court is of the opinion that the question belonged to the board. The act makes it the duty of the sheriff to give the notices of the election for the day mentioned and then declares, if a majority of the votes shall be in favor of the subscription, the county board shall subscribe the stock. The right of the board to act in an execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription; and to have acted without first ascertaining it, would have been a clear violation of duty; and the ascertainment of the fact was necessarily left to the inquiry and judgment of the board itself, as

no other tribunal was provided for the purpose. This board was one from its organization and duties fit and competent to be the depositary of the trust thus confided to it. The persons composing it were elected by the county; and it was already invested with the highest functions concerning its general police and fiscal interests.

"We do not say that the decision of the board would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the power, and before the interest of third parties had attached; but after the authority has been executed, the stock subscribed, and the bonds issued, and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a **bona fide** holder of the bonds in this collateral way.

"Another answer to this ground of defense is, that the purchaser of the bonds had a right to assume that the vote of the county, which was made a condition to the grant of the power, had been obtained, from the fact of the subscription, by the board, to the stock of the railroad company, and the issuing of the bonds." **Commissioners of Knox County v. Aspinwall, et al., 21 How., 544, 545.**

In the case of **Mercer County v. Hacket, 1 Wall., 83,** the Court said:

"Where a county issues its bonds payable to bearer, and solemnly pledges the faith, credit and property of the county, under the authority of an act of Assembly, referred to on the face of the bonds by date, for their payment, and those bonds pass **bona fide**, into the hands of holders for value,

the county is bound to pay them. It is no defense to the claim of such a holder that the act of the Assembly, referred to on the face of the bonds, authorized the county to issue the bonds only and subject to certain 'restrictions, limitations and conditions,' which have not been formally complied with; nor that the bonds were sold at less than par, when the act authorizing their issue and referred to by date on the face of the instrument, declared that they should, 'in no case,' nor 'under any pretense' be so sold.

"Corporation bonds payable to bearer, have, in this day, the qualities of negotiable instruments. The corporate seal upon them does not change the case." **Mercer County v. Hacket, 1 Wall., 83.**

To the same effect are the cases of:

Gelpcke v. City of Dubuque, 1 Wall., 175;
Meyer v. City of Muscatine, 1 Wall., 385;
Rogers v. Burlington, 3 Wall., 667.

In the case of **Mayor v. Lord**, in the **9 Wall., p. 409**, the Court said:

"It is not denied that the relator was an innocent purchaser. In that event, if the bonds could have been properly issued under any circumstances, he had a right to presume they were so issued, and against him the city is estopped to deny their validity." **9 Wall., 414.**

In the case of **Supervisors v. Schenck, 5 Wall., 772**, the Court fully discussed the difference between the right to contest the validity of a bond issue before the bonds have been issued and sold, and the right to contest such an

issue after the bonds have passed into the hands of innocent third parties, and been acquiesced in by the corporation by the levy and the payment of a tax by the corporation through a series of years. The syllabus of that case indicates fully the conclusions arrived at by the Court, and is, as follows:

> "The levy of a tax and payment of interest by the proper county authorities, validates, in the hands of **bona fide** holders for value, county bonds, issued in their origin, irregularly as ex. gr. in virtue of a popular vote ordered by a 'County Court,' instead of one ordered by the Board of Supervisors; the vote, however, and other proceedings having been in all respects other than the source of order regular.
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> "In this case, the tax had been levied and the interest paid by the county for nine years before it was set up that the bonds were void." **5 Wall, 772.**
>
> "It may well be doubted whether the appellees are in a position to question the validity of a statute. They are the owners of the 'Kall' tract mentioned in the first section of the act, and with respect to which it was made a condition that the owners should dedicate the land in said tract contained within the lines of the streets to be extended; and, it appears by the record, that, in order to procure the desired action of the Commissioners, they did dedicate to the District of Columbia for highway purposes the land in said tract contained within the lines of S. Twenty-second and Decatur Streets.
>
> "Prior to the filing of the petition of the Commissioners, the authorities of the District had taken no steps towards the contemplated extension of

these streets. In fact, under the act, they had no power to do so. The power was called into action by the dedication of the Kall tract. By such dedication, the appellees put the act into operation, and voluntarily subjected themselves to its provisions, including the mode of assessment. The constitutional right against unjust taxation is given for the protection of private property, and may be waived by those affected, who consent to such action to their property as would otherwise be invalid.

"Under some circumstances, a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist, if one should ask for and encourage the levy of the tax of which he subsequently complains; and some of the cases go far in the direction of holding that a mere failure to give notice of objections to one who, with the knowledge of the person taxes, as contractor or otherwise, is expending money in reliance upon payment from the taxes, may have the same effect.' **Cooley on Taxation, 573; Tagh v. Adams, 10 Cush., 253; Bidwell v. City of Pittsburg, 85 Penn., 412; Lafayette v. Fowler, 34 Ind., 140; Shutte v. Thompson, 15 Wall., 151." Wight v. Davidson, 181 U. S., 377.**

And, finally, the Supreme Court of the United States, in the case of **Tulare v. Shepard,** where the effect of acquiescence by the taxpayers in paying taxes levied by a **de facto** irrigation district, which it was claimed had not been legally organized, and where the property owners claimed that the collection of the taxes levied by such

district deprived them of their property, without due process of law, was fully dealt with at length, Mr. Justice Peckham, as the organ of the Court, after holding that the **de facto** irrigation district was absolutely estopped from questioning the validity of the bonds in the hands of a **bona fide** holder, held that the property owners of the **de facto** corporation were estopped fr[illegible] raising any objection after having acquiesced in the bonds by paying taxes, as follows:

> "In addition to the strength of the position of the plaintiff in the action as a **bona fide** purchaser and holder of the bonds, the position of defendants merit due consideration. Regarding the individual defendants, it is scarcely possible to believe that they were not aware of the proceedings above recited, taken to organize the corporation, and thereafter to issue its bonds, even though it should be admitted that the public notice was not legally sufficient to comply with the statute. They were the owners of land within the proposed district. The proceedings were all of a public nature, and two public elections were held within the district before the bonds were issued. Of these facts, already detailed, we say it is impossible to believe that the individual defendants did not have knowledge at the time of their occurrence, and yet they took no action to prevent the issuing of the bonds or to call in question by the slightest hint the validity of the organization of the district as a corporation. On the contrary, they entirely acquiesced in all proceedings leading up to their issue, in obtaining the moneys therefrom, in the expenditure thereof for the purpose for which the bonds were issued, and in paying during several years the assessments made upon the lands within the district for the purpose of paying the interest

on the bonds which had been issued. After all this had been done, we can properly use the language found in the opinion in **Bissel v. City of Jeffersonville, 24 How., supra, at p. 299:**

" 'It was then too late to call in question the fact determined by the Common Council, and a **fortiori** it is too late to raise that question in a case like the present, where it is shown that the plaintiffs are innocent holders for value.'

"Assuming the insufficiency of the notice of the intended presentation of the petition to the Board of Supervisors, the defendant land owners could have applied to the Attorney General for the commencement of an action in the nature of **a quo warranto**, to raise and decide the question, after the Board had decided the organization was duly formed. Or they could have themselves commenced an action to restrain the proposed issue of bonds on the ground that there was no valid corporation, and therefore no valid body to issue them. Their interest as land owners in the district would be sufficient to permit them to maintain such action. On the contrary, they did nothing, and in view of all the facts above detailed, and giving due effect to the provisions of the statute referred to and the determination of the supervisors, together with the recitals in the bonds, it is clear to us that they waived their right to thereafter object on the ground stated, as against a **bona fide** holder of the bonds for value. As to the defendant corporation, it seems so clear that it cannot be heard to set up the invalidity of the bonds on the ground that it was not legally incorporated, that we do not think it necessary to further discuss the question. **Taylor on Corporations, 4 Ed., Sec. 146.**" **Tulare Irrigation District v. Shepard, 185 U. S., pp. 25, 26.**

The instant case has many features in common with the case of **Tulare Irrigation District v. Shepard.** There have been held seven elections in the District to vote special taxes in aid of a drainage system for the District—held at intervals in a period extending over more than three years. The various issues of the bonds have been litigated in the Supreme Court of Louisiana in four cases. The taxes have been paid to the District as levied by the plaintiff for the year 1910. The District had been created and organized and special acreage **tax levied prior to the acquisition of any land therein by plaintiff.** The constitution and laws of Louisiana have conferred upon the Board power to issue the bonds when authorized by a majority in number and amount of the taxpayers. The taxpayers have authorized the issuance of the bonds. The Legislature provided ample time within which the proceedings, constituting the authority for the levy of the tax and the issuance of the bonds, could be contested. The bonds have been made payable to bearer and bear upon their face reference to the article of the constitution and the act of the Legislature authorizing their issue. The bonds have endorsed on them the certificate of the Secretary of State, showing that they are payable from the proceeds of a tax, and they have been sold by the Board for their par value and are now in the hands of **bona fide** innocent holders for value. Under these circumstances, it is impossible for the writer to conceive how the tax, which alone gives life and substance to the bonds, could be repudiated by a property owner, who neglected to avail himself of the right to contest the tax and bonds on the ground of lack of benefit to their property, before they

were issued, and has continued since to contribute to the belief that the bonds were valid obligations, payable from a tax on his land, by paying the taxes assessed against it.

If the taxpayers felt that their property would derive no benefit from the drainage system, and that, therefore, the special acreage tax to be levied on their lands would constitute a taking of their property, without due process of law, it was their duty to have contested the proceedings forming the basis for the levy of the tax and the issuance of the bonds within the time allowed by section 17 of Act 256, and not having contested the proceedings within that time and having acquiesced in the levy of the tax for a long period of years and paid the tax annually, they have waived their constitutional rights by their conduct of acquiescence and could not now be heard to urge them.

> "The right to enforce or protect a constitutional right in a court of equity may be lost by laches, the same as other rights. **Ency. of U. S. Supreme Court Reports, Vol. 4, p. 80; Pennsylvania Mutual Life Ins. Co. v. Austin, 168 U. S., 685.**
>
> "Under some circumstances a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax of which he subsequently complains; and some of the cases go so far in this direction as to hold that a mere failure to give notice of objections to one who, with the knowledge of the person taxed, as contractor, or otherwise, is expending money in reliance upon payment from

the taxes, may have the same effect. **Cooley on Taxation, p. 573, and cases cited in note 5; Tagh v. Adams, 10 Cush., 252; Bidwell v. City of Pittsburgh, 85 Pa. St., 412; Shutte v. Thompson, 15 Wall, 151.'' Shepard v. Barron, 194 U. S., 553.**

The Supreme Court of Louisiana is in full accord with the Supreme Court of the United States:

''A taxpayer who petitions for the passage of an ordinance levying a special tax, who actively supports and votes for the ordinance, when submitted to the votes of the taxpayers, who has so acted in advancement of his own interest, and who has secured advantage from the passage of the ordinance, upon which other parties have acted, is estopped from setting up the illegality and unconstitutionality of the tax as a defense against paying it.'' **Clinton B. Andrus v. Board of Police of Opelousas, et als., 41 Ann., 697.**

See, also, **Laurent Dupre v. Board of Police of Opelousas, et als., 42 Ann., 801; Mayor, etc., of New Iberia v. Fontellieu, 108 La., 461; Taxpayers of Webster Parish v. Police Jury, 52 Ann., 466; Bacas v. Adler, 112 La., 814; Burden v. Police Jury of St. Martin Parish, 127 La., 556.**

''The reason of the law is that, if there be grounds for contesting the tax, those who complain should bring the matter to the attention of the courts within a reasonable time—not wait until the railway company, acting upon the faith of what has been done and the inducement held out, has gone ahead and expended large sums of money in prosecuting the enterprise, the promotion of which was the object of voting the tax.'' **Guillory v. Avoyelles Railway Co., 104 La., 14.**

See **James v. Arkansas-Southern Ry. Co., 110 La., 159; Gray v. Bourgeoise, 107 La., 67.**

Where the tax debtor recognizes the validity of assessments of his property, in the name of another, by paying the taxes, he is estopped from questioning the validity of such assessments.

Lane v. Succession of March, 33 La. Ann., 554; Carter v. City of New Orleans, 33 La. Ann., 816; Insurance Co. v. Levy, 42 La. Ann., 435; Palmer v. Board, 42 La. Ann., 1127.

Therefore, it seems clear that as the injunction to prevent the collection of the tax, out of which alone are payable the bonds in the hands of the Intervenor, a **bona fide** holder for value, is an attack on the bonds themselves, and the Plaintiff would be estopped by his conduct from raising any objections to the collection of such tax.

THIRD ERROR.

The jurisdiction or power of the courts of Louisiana to try cases in Louisiana is conferred by the constitution of that state, and the exercise of such jurisdiction or power is regulated by the legislature. No court has any jurisdiction or power, except such as has expressly been conferred by its creator, or may reasonably be inferred from the act by which it is created. **A fortiori**, the proceedings in a case which a court is forbidden by its creator to entertain is absolutely null, the merest **brutem fulmen**, and a judgment rendered by the court in such

proceedings depriving a citizen of his property rights would be no judgment at all, and, if carried into effect, would deprive the litigant of his property without any process of law whatsoever.

As has been shown, **supra**, the acts of the Legislature of Louisiana, section 16 of Act 145 of 1902, and sections 17 and 31 of Act 256 of 1910, respectively, the acts providing for the levy of special acreage taxes or forced contributions by an election by the property owners, in accordance with art. 281 of the state constitution, provided the former a period of six months, the latter a period of sixty days within which any property owner could attack the proceedings for any cause, after which all cause of action to invalidate the taxes or the bonds was withdrawn. These acts of the Legislature simply regulate the property owner's remedy, giving him ample time within which to assert judicially his rights, and are open to no constitutional objection.

By the amendment to art. 281 of the constitution, adopted by the people in November, 1914, in accordance with Act 192 of 1914, all bonds issued under and by virtue of that article, were validated, where they had not been theretofore declared invalid by a court of last resort and more than sixty days had elapsed since the promulgation of the proceedings evidencing the issuance of said bonds; and the jurisdiction, or power, of all of the courts of the state "to entertain any contest wherein their (the bonds) validity or constitutionality is questioned," was withdrawn.

There can be no doubt that the sovereign people of Louisiana have the absolute, unrestricted right to create and regulate the jurisdiction or power of and abolish their courts; they have the same power to wihdraw jurisdiction as they have to confer it. The fact that a suit of the class as to which their jurisdiction may be withdrawn, at the time, is pending in an appellate court, would not exempt that suit from the effect of the constitutional provision withdrawing the court's jurisdiction, or power, to entertain it.

The federal constitution, as originally passed, contained no inhibition of suits by citizens of another state, or by citizens or subjects of any foreign state, against one of the United States. In fact, many such suits were brought and were pending when the 11th amendment was adopted. Then the question arose as to the effect of that amendment on suits so pending at the time of its adoption. After elaborate argument by the most eminent lawyers of the day, this court promptly decided that the effect of the amendment was the abatement of the cases. **State of Georgia v. Bailsford, et al., 2 Dall., 402; Chisholm v. State of Georgia, 2 Dall., 419; Hollingsworth v. Virginia, 3 Dall., 378.**

In the case of **U. S. v. Boisdore's Heirs, 8 How., 121,** this Court said:

> "It is true that this court can exercise no appellate power over this case, unless it is conferred upon it by act of Congress. And if the laws which gave it jurisdiction in such cases have expired, so far as regards claims in the State of Mississippi, its jurisdiction over them has ceased, although

> this appeal was actually pending in this court when they expired."

In the case of **Insurance Co. v. Richtie, 5 Wall., 544,** the same principle was recognized by this court. The Court said:

> "It is clear, that when jurisdiction of a cause depends upon a statute, the repeal of the statute takes away the jurisdiction, and it is equally clear, that where a jurisdiction conferred by statute, is prohibited by a subsequent statute, the prohibition is, so far, a repeal of the statute conferring the jurisdiction."

In line with these two decisions are the cases of **Ex Parte McCarble, 7 Wall., 506,** and **Assessors v. Osbornes, 9 Wall., 567.**

The Supreme Court of Louisiana had occasion to recognize the correctness of this principle on several occasions.

In the case of **Hoyle v. N. O. City R. R. Co., 23 Ann., 502,** that Court said:

> "From and after the passage of the act creating the Eighth District Court for the Parish of Orleans, the other district courts of the parish were divested of all jurisdiction over cases in which exclusive jurisdiction was given to the Eighth District Court. The signing of a judgment in an injunction suit by the judge of the Sixth District Court, after the passage of the act creating the Eighth District Court, is therefore null and without legal effect, because the Sixth District Court was divested of jurisdiction over the case."

And in the case of **Knox v. Gurnett, 28 Ann., 601,** the Supreme Court said:

> "This suit was instituted in 1866. At that time, the District Court had jurisdiction, but the Constitution of 1868 intervened. Under that Constitution the Parish Court alone has jurisdiction over such cases. The Constitution is, of course, supreme, and when it gives to Parish Courts exclusive jurisdiction over such succession matters as relate to settlement of accounts, it necessarily deprives all other Courts of the power of exercising jurisdiction. These cases, which had been instituted in the District Courts before the Constitution that changed the jurisdiction was adopted, should have been transferred to the Court to which the jurisdiction had been given."

It has been suggested in this case that there has been no attack leveled against the bonds—that the attack is upon the special acreage tax from which the bonds are payable. The writer is totally incapable of understanding any such hair-splitting distinction. The bonds are payable from the tax alone, and the entire six cents per acre tax was capitalized into the bond issue, part of which is owned by the Intervenor, and, if that is destroyed, the bonds can never be paid, and will then be mere waste-paper. No possibility of the District obtaining any money from any other source from which they could be paid exists; the tax and the bonds are so blended by art. 281 of the constitution, and those provisions of law carying them into effect, secs. 22 and 23 of Act 95 of 1906, and secs. 22, 23, 24, 25, 26 and 27 of Act 256 of 1910, respectively, as to be inseparable. Besides, art. 281 of the constitution, the

law and the election proceedings were specially referred to and made a part of the bond contract printed in the bond itself. To say that to take away the tax, the very foundation of the bonds—the only thing that gives them value, life, vitality, would not be an attack upon the bonds is equivalent to saying that to dig away the foundation of my house and thereby reduce it to a worthless pile of bricks, mortar and lumber, would not be to destroy it. In either case the maxim **sublato fundamento cadit opus** would be equally applicable. The principles of justice, which are the foundation stones upon which all law and jurisprudence is built, could never recognize any such quibbling, finely drawn sophistry.

Even were the matter **res nova**, it would seem that the mind would at once jump to the conclusion that where the law authorizes the voting of a tax and the funding of that tax into bonds, the bonds and the tax would be inseparable (without the aid of argument); but the question is not new, as it has several times been considered by this Court and so determined, the case of **State v. Pillsbury, 105 U. S., 278**, being the leading case:

In 1852 the General Assembly of the State of Louisiana passed an act, entitled "An act to consolidate the City of New Orleans and provide for the government and administration of its affairs." That act provided for the levy on each of the municipailties of a special tax on real estate and slaves in each municipality in proportion to its indebtedness for the purpose of paying the principal and interest of the bonds of New Orleans, known as consolidated bonds, issued to the creditors of the respective municipalities for the debts due them. In 1876, the Legis-

lature of Louisiana passed an act, designed as stated in the title, to adjust, regulate and provide for the bonded debt of the city of New Orleans, and authorize the exchange of its lands for other bonds to be issued on a plan known as the premium bond plan, the object of which was to impair, if possible, the obligation of the contract between the bondholders and the city, and divest the rights acquired by them under it, by prohibiting the city authorities from levying a tax in any year under the provisions of the act of 1852, by shackling the judicial tribunals in the issue of process, and by repealing the provisions of that act.

The Southern Bank brought suit by mandamus to compel the municipal authorities of that city to levy a special tax to pay certain coupons on outstanding bonds issued under the Act of 1852, and to purchase the bonds with any surplus remaining of the monies collected. In its decision, this court maintained the position taken by Intervenor, that the special acreage tax and the bonds are inseparable. The Court said:

> "Assuming for the present that the Act of 1852 is not invalid, for the reasons stated, the first inquiry is as to the character of the transaction authorized by it and the supplementary act. Did it, when consummated, amount to a contract between the city and the parties subsequently taking the bonds; and did the pledge to levy the annual tax named form part of the contract? Unless both of these questions can be answered in the affirmative, it will be to no purpose to inquire into the subsequent legislation of the state respecting the tax, as no inhibition would rest upon its power over the subject.

"* * * These provisions, until the bonds were accepted, were in the nature of proposals to the creditors of the old city, of the municipalities and of Lafayette. The state, in effect, said to them: The city will give these bonds, running for the period designated, and drawing interest, in exchange for your demands; and as security for the payment of interest, and the gradual redemption of the principal, the city shall annually, in January, levy a special tax for that purpose to the amount of $650,000.00. The provisions were designed to give value to the proposed bonds in the markets of the country, and necessarily operated as an inducement to creditors to take them. When the bonds were issued and taken by creditors, a contract was consummated between them and the city, as fully as if all the provisions had been embodied as express stipulations in the most formal instrument signed by the parties. On the one hand, the creditors surrendered their debts against the former municipalities; and on the other hand, in consideration of the surrender, the city gave to them its bonds, which carried the pledge of an annual tax of a specified amount for the payment of the interest on them, and ultimately of the principal. The annual tax was the security offered to the creditors; and it could not be afterwards severed from the contract without violating its stipulations, any more than a mortgage executed as security for a note given for a loan could be repudiated as forming no part of the transaction. Nearly all legislative contracts are made in a similar way. The law authorizes certain bonds to be issued, or certain work to be done upon specified conditions. When these are excepted, a contract is entered into imposing the duties and creating the liabilities of the most carefully drawn instrument embodying

the provisions. **Van Hoffman v. City of Quincy, 4 Wall., 535; Hartman v. Greenlaw, 102 U. S., 672; People v. Bond, 10 Cal., 563; Brooklyn Park Co. v. Armstrong, 45 N. Y., 235.**" **105 U. S., 286, 287, 288.**

In the case of **Van Hoffman v. City of Quincy, 4 Wall., 535, 554,** this court said:

> "When the bonds in question were issued there were laws in force which authorized and required the collection of taxes sufficient in amount to meet the interest, as it accrued from time to time upon the entire debt. But for the Act of 1863, there would be no difficulty in enforcing them. The amount permitted to be collected by that act will be insufficient, and it is not certain that anything will be yielded applicable to that object. To the extent of the deficiency the obligation of the contract will be impaired, and if there be nothing applicable, it may be regarded as annulled. A right without a remedy is as if it were not. For every beneficial purpose it may be said to exist.
>
> "It is well settled that a state may disable itself by contract from exercising its taxing power in particular cases. It is equally clear that where a state has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The state and corporation, in such cases, are equally bound. The power given becomes a trust which the donor cannot annul and which the donee is bound to execute, and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other.

"The laws requiring taxes to the requisite amount to be collected, in force when the bonds were issued, are still in force for all the purposes of this case. The Act of 1863 is, so far as it affects these bonds, a nullity. It is the duty of the city to impose and collect the taxes in all respects as if that act had not been passed. A different result would leave nothing of the contract, but an abstract right—of no practical value—and render the protection of the Constitution a shadow and a delusion."

In the case of **Brooklyn Park Co. v. Armstrong, 45 N. Y., 234,** where bonds of the city had been issued and used to raise funds for the compensation paid for the land, it was held:

"That the terms of the act and the issue of the bonds, constituted a contract between the bondholder of the one part, and the city and the state on the other, specifically pledging the land taken for the payment of the lands, and that a subsequent act of the Legislature, authorizing a sale of any portion of the park, free of all liens, existing by virtue of the original, was in violation of the Federal Constitution, as impairing the obligations of contracts."

In the case of **Brodue, et al., v. McCabe, Collector, 33 Ark., 690,** we have a decision directly in point. In that case, the court said:

"It is now well settled that where bonds of a county or municipality have been issued under authority of law, and where, at the same time, the law has directed a tax, to be levied for their protection—or where there is a general law author-

izing and directing a tax in all like cases, applicable to said bonds, the law becomes a part of the contract. The holder is entitled to look to the taxing provision as a part of his security, and has a vested right to demand at the proper time, that it shall be exercised in his favor. The measure of that right will be the constitutional limit of the power which the Legislature could grant to the municipality when the contract was made. Such contracts are protected by the Constitution of the United States, and no subsequent act of a State Legislature or Constitutional Commission, can impair them."

See, also the cases of: **Hayden v. Douglas, 170 F., 24, 30; Jewell v. City of Superior, 135 F., 19; State ex rel. Donnelly v. Hope, 106 Wis., 411, 82 N. W., 336.**

Therefore, it would seem to be well settled that an attack on the special acreage tax of six cents per acre is an attack on the bond issue, partly owned by Intervenor, into which said tax was funded, and that the Supreme Court of Louisiana, by reason of art. 281 of the constitution, as amended in 1914, was without jurisdiction in the premises, and the judgment of that court, annulling the said tax, is an absolute nullity, because rendered by a court without jurisdiction or power.

In the case of **Old Wayne Life Ass'n v. McDonogh, 204 U. S., 15,** the Court said:

"The plaintiff in error insists that the Pennsylvania court had no jurisdiction to proceed against it; consequently the judgment it rendered was void for the want of due process of law required by the 14th amendment. If the defendant had no

such actual, legal notice of the Pennsylvania suit, as would bring it into court, or if it did not voluntarily appear therein by an authorized representative, then the Pennsylvania court was without jurisdiction, and the conclusion just stated would follow, even if the judgment would be deemed conclusive in the courts of that commonwealth. The constitutional requirement that full faith and credit shall be given to each state to the public acts, records and judicial proceedings of every other state is necessarily to be interpreted in connection with other provisions of the Constitution, and, therefore, no state can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings, if they are wanting in due process of law enjoined by the fundamental law. 'No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.' **Scott v. McNeal, 154 U. S., 34, 46.** No State can, by any tribunal or representative render nugatory a provision of the supreme law. And if the conclusiveness of the judgment or decree in a court of one state is questioned in a court of another government, federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it."

Of all the requirements of due process of law, a competent tribunal to pass upon the subject matter of the litigation is put first.

Cyc., Vol. 8, pp. 1095, 1906:

"**b. Particular Requirements.** Due process requires in all cases an impartial tribunal, competent by the law of its creation, to pass upon the subject-matter of the suit. * * *"

The question covered by this assignment of error was raised in the Supreme Court of Louisiana before judgment by the motion to dismiss, and is, therefore, apparent on the face of the record.

Wherefore, it is respectfully submitted that the decree of the Supreme Court of Louisiana rendered herein should be annulled and set aside and judgment rendered dismissing Plaintiff's suit.

WM. WINANS WALL,

Attorney for Plaintiff in Error.

FILED
MAR 22 1917
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 472.

PAUL HILL SAUNDER,
Plaintiff in Error,

versus

DANIEL SHAW and THE BOARD OF DRAINAGE COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT,
Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF DANIEL SHAW, DEFENDANT IN ERROR.

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SYLLABUS.

Where the record shows that, after overruling the judgment of the lower Court refusing to admit evidence, evidence was admitted, to be used in the event of such overruling, and the State Supreme Court decided the

cause upon that testimony, and upon the admissions in the answer, no ground is presented for a writ of error to the United States Supreme Court, and plaintiff in error has not been deprived of any right guaranteed by the Fourteenth Amendment.

Low marsh lands comprising islands which cannot be benefited directly or indirectly by a drainage improvement of the mainland, may not consistently with the due process of law clause of the United States Constitution, Fourteenth Amendment, be included within the drainage district, solely for the purpose of deriving a revenue from the levy and collection of drainage taxes thereon, for the benefit of other lands subject to be improved by drainage.

Myles Salt Co. vs. Board of Comrs. of Iberia and St. Mary Drainage District, 239 U. S. 292.

"A drainage district has the special purpose of the improvement of particular property, and when it is formed, to include property which is not and can not be benefited directly or indirectly, including it only that it may pay for the benefit of other property, there is an abuse of power and an act of confiscation."

Ibed.

The fact that bonds were issued, secured by a tax on this land, would not make the act any less an act of confiscation.

The ruling of a State Court with respect to the question as to whether low marsh islands within the Gulf of Mexico can be, and are drained by a canal, constructed on the main lands, which can only increase the flow

of waters upon it, and is not pretended can take water from it, and also with respect to admissions by plaintiff in error that the lands taxed were never intended to be levied and pumped, with the proceeds of the tax, are questions as to which the decision of the State Court is controlling on writ of error to the Federal Supreme Court.

St. Louis & K. C. L. Co. vs. Kansas City, 241 U. S. 419.

ARGUMENT.

Upon Assignments of Error.

Answer of Daniel Shaw, defendant in error to brief of Paul H. Saunders, intervenor and plaintiff in error:

STATEMENT OF CASE.

Daniel Shaw, a resident of Thief River, State of Minnesota, is the owner of 4,122.05 acres of land, located in the Parish of St. Bernard, La. This land consists of small marsh islands, on the southern border of that parish, bordering on the Gulf of Mexico, and is marked by the numbers 1, 2, 11, 12, 20 and 22, designated as Township 16, Range 17; and, also, No. 6, in Township 12, Range 17—the latter an island on Lake Borgne—on the map of the Bayou Terre-aux-Bœuf Drainage District, annexed to the record. An attempt was made by the Sheriff to sell this land for a drainage tax of 25 cents an acre, claimed by the Board of Commissioners of the Terre-aux-Bœuf District of St. Bernard Parish, Louisiana.

Defendant in error enjoined the sale, alleging that his lands would not be benefited by the proposed drainage system, and that, under the laws of the State, the acreage tax should only be imposed upon such lands in the District as are specially benefited by the drainage, and his property would not be benefited by the drainage contemplated by the Board. On the trial, testimony offered to prove that this was low marsh land, surrounded and covered by water, was ruled out by the Court. After this ruling, the objected testimony was taken in open court, and the annexed copy of map was filed in evidence, and evidence was also produced by defendant and intervenor themselves for the alleged purpose of showing that these were not islands in the Gulf of Mexico. This evidence was stated to the Court to be taken for the purpose of completing the record. So that, should the State Supreme Court overrule the decision of the lower Court, there would be sufficient evidence in the record to enable the Court to pass upon the question raised, without remanding the case.

The judgment of the State Supreme Court was in favor of defendant in error, and from it this writ of error is taken to this Court by the intervenor.

FIRST. The first assignment of error is that the Louisiana Supreme Court decided against him on the merits, after overruling the judgment of the District Court refusing to admit testimony to prove the averments of the petition, without any evidence before it to support the judgment.

This groundless and positive assertion is made and reiterated in an extended brief of 138 pages. This assertion is made, notwithstanding the fact that the printed record before this Court shows that the Court had before it ample evidence to sustain its judgment.

At page 50 of the record it is shown that plaintiff (defendant in error) offered evidence to prove "that these lands, belonging to Daniel Shaw, are islands in the Gulf of Mexico, and for that reason are not liable to a drainage tax," and "that these lands will not receive any benefit therefrom."

That defendant "objected to this kind of evidence going in, on the ground of benefits to be derived," and also objected "on the ground that the attack started is in effect an attack upon the validity of the taxes levied by the Bayou Terre-aux-Bœufs Drainage District"; and also an attack upon the bonds "issued by that District," etc.

That the lower Court sustained the objection, and that counsel for Daniel Shaw said, "Now, in order to have our record complete," we will offer a note of evidence, and at page 52, "offered this evidence to complete our record to carry it to the Supreme Court." Thereupon, ten pages of testimony was offered and filed in evidence, from pages 50 to 62, and a copy of the map of the Bayou Terre-aux- Bœuf Drainage District, at page 24 of the record, marked "P 34."

That, at page 54, the then counsel for defendant and intervenor himself offered evidence, after his objection to evidence was sustained.

The Supreme Court, after overruling the judgment of the lower Court, ruling out this evidence and, finding before it all of the ruled out evidence (Rec., p. 87), said:

> "The answer and the *testimony* in *the record* show that the lands of plaintiff are low and marshy, and covered in part by the waters of the Gulf of Mexico; and that they have not been benefited by the drainage work done by the defendant Board; and, *according to the answer, it is not contemplated* that

> they will be drained of the water which appears to be standing on and over them; and that the only means of draining these lands would be for the plaintiff to put them in a sub-drainage district, and levee and pump them; and to pay an additional tax imposed for that purpose or method of drainage.
>
> "It is clear that plaintiff's lands have not been drained, *are not to be drained,* and cannot be drained, under the present system of the defendant Board; and that the lands belonging to other persons in the district are being drained by natural outlets or by gravitation, the costs of which are paid and to be paid, in part, out of the forced contributions imposed upon plaintiff's lands, the collection of which is enjoined in this suit."

The only benefit alleged to have been derived by plaintiff from the drainage system adopted by defendant in the district, in which his lands are located, is that they have been enhanced in value with the other property in the district, and that they will be more valuable if he causes them to be incorporated in a sub-drainage district, and will tax himself for the cost of having them levied and pumped by artificial means, "to accomplish their complete reclamation."

But such benefit is not a benefit to the lands,

> "unless and until plaintiff taxes himself for the cost of levying and pumping them. This latter cost is not to be paid from the forced contributions to be collected at this time from the plaintiff; and the lands are not being benefited in any manner whatever by the drainage of other portions of the district. Plaintiff cannot be compelled to pay for the drainage of other lands in the district in which his property has been illegally and arbitrarily included, and when they are not being benefited directly or indirectly by drainage. If

that were done, it would be the taking of plaintiff's property without due process of law.

"Plaintiff's lands are largely covered by water now. They are to receive more water upon them, if that is possible, through the system of drainage adopted by defendant; that is, through natural canals and outlets which have been cleared and enlarged, and which convey the water from other lands in the district on to plaintiff's lands. Defendants say that the low marshy lands of plaintiff and others 'owe a servitude of drainage to the higher lands, which are to be drained by gravitation.'

"This may be true, but such a servitude does not drain plaintiff's lands; and plaintiff cannot be compelled to pay for the exercise of that servitude on his lands by others. The lands which are drained must pay the costs of draining them. No act of the Board could be more arbitrary, if drainage alone be regarded, than that of imposing a tax on lands of plaintiff under such circumstances.

"It is clear that plaintiff's property was included in the drainage district, not in the exercise of 'legal legislative' discretion."

Not because the system of drainage would innure to the benefit of the property even directly, but for the purpose of deriving revenues, so as to grant a special benefit to other lands, subject to be imposed by drainage, without any benefit to plaintiff or his property whatever, present or prospective.

"The exaction of the taxes claimed by defendant from plaintiff is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of the latter's property, and it cannot be maintained."

See opinion of Louisiana Supreme Court, page 87, rendered February 21, 1916; 138 La. 934.

The Court there refers to the recent decision of this Court in *Myles Salt Company vs. Board of Commissioners of Iberia & St. Mary Drainage District*, as sustaining its views in this case.

The judgment of the Louisiana Court is based not only on the testimony and evidence adduced, but also on the admissions of defendant contained in its answer and adopted and made his own by intervenor, P. H. Saunders. Testimony positively asserted not to be in the record by him.

This Court does not enter into an examination of the sufficiency of the evidence to sustain the judgment of the Court below, but may only inquire into the fact whether there was any evidence or admission at all upon which to base the judgment sought to be reviewed. It is enough that there be any evidence at all.

It, therefore, is conclusively shown that this first assignment of error is entirely groundless and is taken totally regardless of the law and facts.

The second assignment of error is equally unfounded.

It is claimed, in substance, that

> "after a drainage district has been formed and its boundaries established by a Police Jury, under legislative authority, and bonds have been issued, payable out of the acreage tax levied thereon, the judicial department of the State could not correct an honest finding of the political or legislative departments, by reason of the Fourteenth Amendment to the Constitution of the United States, that the levying and collection of such tax deprived defendant in error (the original plaintiff) of his property without due process of law."

The proposition is, that where a local improvement is to be made and a forced acreage tax levied, without assessment of valuation, property which is to receive no benefit whatever may be subjected to that tax under legislative authority.

This is not a case where an owner of property is called upon to pay a tax for carrying on the public works of the government under the constitutional provision requiring all property to be taxed according to its assessed value, and to be equal and uniform, but is a tax of 25 cents per acre of all lands within a certain district which is to be drained, and is based upon the assumption that it is to be drained.

The question here raised is the same as that raised in the *Myles case*, above quoted, in every particular, except that the land in this case is a low marsh island and that in the *Myles Salt Company case* was a high island. The Louisiana Supreme Court, in its opinion said:

> "This case is similar in principle to the one under consideration."

And quoting from it, says:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property and when it is so formed to include property which is not and can not be benefited, directly or indirectly including it, only that it may pay for the benefit of other property, there is an abuse of power and an *act of confiscation.* (*Wagner vs. Leser, supra.*)"

We are not dealing with motives alone, but as well with their resultant action. We are not dealing with disputable grounds of discretion or disputable degrees of benefit, but

with an exercise of power determined by considerations, not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind.

The State Supreme Court, continuing, then says:

> "There is no doubt that the Legislature of a State may constitute drainage districts and define their boundaries, or delegate such authority to local or legislative bodies, as, in the present case, to the police juries of the parishes of the State, and that their action cannot be assailed under the Fourteenth Amendment unless it is palpably arbitrary and a *plain abuse* of power."
>
> "Palintiff has not invoked the property clause of the Constitution of the United States in a direct way, but he has set up that his lands wil not receive any benefit from the system of drainage being carried out by the defendant, and that, under the law, no acreage tax can be imposed on his lands therefor, as they will not be specially benefited by drainage; and that the seizure and sale of his property for the drainage taxes or forced contributions claimed by defendant would cause him irreparable injury, and he asks that they be canceled and enjoined."

On the question of the finality of the action of the Legislature, set up in this second assignment of error by the plaintiff in error, the Louisiana Court further said:

> "In the case of *Houck vs. Little River Drainage*, from the State of Missouri, the Supreme Court of the United States only recently held that the drainage tax therein imposed was legal. The right of the Legislature, unless restricted by the State Constitu-

tion, to create drainage districts directly, or to provide for their institution, and to authorize them to carry on systems of drainage, at the expense of those lands which are to be drained, was therein recognized; and it was said that the action of the Legislature, or the body having the authority of the Legislature, could not be assailed under the Fourteenth Amendment unless it is palpably arbitrary and a plain abuse."

And again it holds:

> "We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of a court of equity to protect the constitutional rights of landowners because of arbitrary and wholly unwarranted legislative action.
>
> "The constitutional provision against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such action, whether under the guise of legislative authority or otherwise."

The evidence contained in the record, together with the finding of the Court, shows beyond a doubt that there was such a palpable, flagrant and plain abuse of power when it attempted to subject Daniel Shaw's small islands of marsh land to a tax for drainage, which it did not drain, and could not, and was never intended to drain.

Counsel for plaintiff in error states that his bonds were issued on the faith of this tax being maintained, and they would be deprived of their security if this land could not be subjected to this acreage tax, whether it was to be benefited or not. True, it is confiscation pure and simple; true, it was an arbitrary exercise of legislative power; yet you must submit to being despoiled of your property in or-

der to sustain the validity of our bonds. The argument assumes that all of these lands included in this land district was of the same character as that shown by the map and testimony and admissions in the pleadings. If that is the case, they deserve no protection from this Court, for then they would be in the position of holding bonds secured by tax on lands that were islands covered with the waters of the Gulf of Mexico, that could only be reached by boats.

It is not to be presumed that lands of this character were ever intended to be drained by a canal, and the answer (Rec., p. 12) virtually says so, where he says, evidently with a view of consoling him for the expected sacrifice of his lands:

> "Your respondent avers, however, that petitioner here (Daniel Shaw) has received an enormous benefit, and is receiving an enormous benefit, from the general drainage taxes levied in the Bayou Terre-aux-Bœuf Drainage District, for the reason that there has been an enormous enhancement in the valuation of properties in the said district since the work of general drainage has been begun, and since the active dredging of the natural outlets of said drainage district has been augmented.
>
> "Respondent further avers that petitioner's lands have been and will enhance in value as a result of the work accomplished and to be done, and will be more valuable if he does with his lands what other property owners are doing with theirs—*i. e.*, to have them incorporated in a subdrainage district, and to have them leveed and pumped by artificial means to accomplishe their complete reclamation," etc.

This is an attempt to molify the grievance of the taxpayer at having his property confiscated in order that it

may afterwards be leveed and pumped. It is to be noticed, however, that he is not cheered by even a hope that this is to be done out of the twenty-five cents per acre tax which is to be exacted of him.

The third assignment of error is:

> "By Article 281 of the Constitution of Louisiana, the bond issue, of which intervenor and plaintiff is the owner, and the tax to pay said bonds, and the interest thereon, have been declared incontestable, such being the case, the Supreme Court of Louisiana, a creature of the Constitution, is without jurisdiction, *ratione materiae,* to render judgment annulling the tax enjoined, and thereby destroying the bonds held by the intervenor and plaintiff in error; and, therefore, intervenor and plaintiff in error has been deprived of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States."

Our reply to this is that if it is true, as is clearly shown in the discussion of the first and second assignments, that the subjection of this property to an acreage tax is a plain and flagrant abuse of power, and a virtual confiscation of the owner's property for the benefit of another, then the fact that the law is found in the State Constitution does not give any greater right to do a palpable wrong than if the law was passed by a police jury. The Fourteenth Amendment secured to the citizen his right in his property and protected him against spoliation under guise of law.

Under this theory of the law, advanced so earnestly by counsel for plaintiff in error, no man could be secure in his rights to his property should he be the owner of the Chandeleur Islands, more than fifty miles from the shore in the

Gulf. An acreage tax could be levied upon him to drain lands in the interior of the State, in addition to his *ad valorem* tax due to the Government, which as a citizen he pays regardless of whether he receives benefits or not.

To his complaint the answer would be made by the holder of some bond: It does not matter whether you are despoiled of your property or not, you cannot be heard, because the law comes from the Constitution of the State. Your land may be ten feet under water, and we do not intend to levee or drain it, but you must suffer the loss of it in order that our own rights may not be endangered. It is true that you have not questioned the validity of a single bond; but, if you can release any one piece of property, you can release the whole.

This is a gross and unfounded assumption. To so hold would lead to the absurd conclusion that all the lands within this drainage district were like those in this suit; that is, an undrainable marsh. It is scarcely imaginable that intelligent business man would cause bonds to be issued payable out of an acreage tax levied upon islands of marsh that could not be, and were not to be, drained.

The most reasonable presumption is that the tract of land in question is not a sample of all the lands in the district, and, being inacessible marsh islands, divided by deep bodies of water from the mainland, they were included by error in the district. Whatever may be the facts, the Court is only concerned with the pieces of property involved in this suit. The guarantees of right to the citizen under the Fourteenth Amendment protect him from laws of the State that would despoil him, as well as protect the holder of a bond. The last expression of opinion of this Court is found at page 649 in *St. Louis & K. C. L. Co. vs. Kansas City*, United States Supreme Court, June 5, 1916.

The argument against taking away one piece of property from the district on the ground that if one is taken all may be taken is unreasonable, for it is well known that in a large district it could never have been intended to include all lands; for instance, cemeteries would have to be omitted; a mountain like that of the Myles Salt Company; also lands belonging to the State on which public buildings are located; as well as islands in the sea, which could not be reached by canals, were never contemplated to be included. If any of these opposed this tax, it would be unreasonable to set up that their bonds were attacked.

Where proof is made beyond question that to take lands of this character for work that cannot in the remotest manner benefit him, intervenor replies that "where bonds are issued it does not matter whether the citizen's property is confiscated or not," all laws of right and wrong give way to him. The Fourteenth Amendment of the Constitution was intended to protect him, not the landowner. This must be the logical conclusion of the argument of plaintiff in error. To state it is to refute it.

This Court has passed so recently upon the questions here raised adversely to the views of the plaintiff in error that it is unnecessary to consume the time of the Court in reviewing them, and we ask that this writ of error be dismissed or the judgment of the lower Court affirmed.

Respectfully submitted,

FRANK L. RICHARDSON,
Attorney for Daniel Shaw,
Defendant in Error.

FRANK SOULE,
Of Counsel.

APR 12 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 472.

PAUL HILL SAUNDERS,
Plaintiff in Error,

versus

DANIEL SHAW and THE BOARD OF DRAINAGE COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT,
Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

MOTION TO DISMISS OR TO AFFIRM.

FRANK L. RICHARDSON,
Counsel for Defendant in Error for the Purposes of these Motions.

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MOTION TO DISMISS OR TO AFFIRM.

Comes now, Daniel Shaw, defendant in error, by Frank L. Richardson, his counsel, appearing in that behalf, and moves the Court to dismiss the writ of error in the above-

entitled cause for want of jurisdiction, because the judgment or decree from which the said writ of error purports to have been taken is the judgment or decree of the Supreme Court of one of the United States, to wit, the Supreme Court of the State of Louisiana.

And the said defendant in error, by counsel as aforesaid, also moves the Court to affirm the said judgment or decree from which the said writ of error purports to have been taken, because, although the record in said cause may show that this Court has jurisdiction in the premises, yet it is manifest that the said writ of error was taken for delay only.

FRANK L. RICHARDSON,
Counsel for Defendant in Error
for the Purposes of these Motions.